

FILED

FEB - 5 2008

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Dear Sir or Madam:

E-filing

CV 08

0815

Your petition has been filed as civil case number _____.

✓ A filing fee of \$5.00 is now due. If you are unable to pay the entire filing fee at this time, you must sign and complete this court's Prisoner's In Forma Pauperis Application in its entirety. If the application is granted, you will not have to prepay the fee.

Your petition is deficient because you did not pay the filing fee and:

1. ✓ you did not file an In Forma Pauperis Application.
2. _____ the In Forma Pauperis Application you submitted is insufficient because:

_____ You did not use the correct form. You must submit this court's current Prisoner's In Forma Pauperis Application.

_____ Your In Forma Pauperis Application was not completed in its entirety.

_____ You did not sign your In Forma Pauperis Application.

_____ You did not submit a Certificate of Funds in Prisoner's Account completed and signed by an authorized officer at the prison.

_____ You did not attach a copy of your prisoner trust account statement showing transactions for the last six months.

_____ Other _____

Enclosed you will find this court's current Prisoner's In Forma Pauperis Application, which includes a Certificate of Funds in Prisoner's Account form, and a return envelope for your convenience.

Warning: YOU MUST RESPOND TO THIS NOTICE. If you do not respond within **THIRTY DAYS** from the filing date stamped above, your action will be **DISMISSED**, the file closed and the entire filing fee will become due immediately. Filing a Prisoner's In Forma Pauperis Application will allow the court to determine whether prepayment of the filing fee should be waived.

Sincerely,
RICHARD W. WIEKING, Clerk,

By _____
Deputy Clerk

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name MONTEZ VICTOR M.
 (Last) (First) (Initial)

FILED

Prisoner Number C-48215

FEB - 5 2008

Institutional Address Correctional Training Facility

P.O. Box 689, Soledad, CA 93960

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

VICTOR M. MONTEZ,

(Enter the full name of plaintiff in this action.)

vs.

BEN CURRY (Warden),

(Enter the full name of respondent(s) or jailor in this action.)

CV

08 0815

Case No. _____
 (To be provided by the clerk of court)

**PETITION FOR A WRIT
 OF HABEAS CORPUS**

E-filing

(PR)

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

PET. FOR WRIT OF HAB. CORPUS

08-05 VRW

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

Los Angeles County Superior Court **Los Angeles**

Court

Location

(b) Case number, if known **LA A146105**

(c) Date and terms of sentence **5/21/1982 - 15 year to life**

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes **xx** No **_____**

Where?

Name of Institution: **Correctional Training Facility**

Address: **P.O. Box 689, Soledad, CA 93960**

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

Second degree murder 187

3. Did you have any of the following?

Arraignment: Yes _____ No _____

Preliminary Hearing: Yes _____ No _____

Motion to Suppress: Yes _____ No _____

4. How did you plead?

Guilty _____ Not Guilty _____ Nolo Contendere _____

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury _____ Judge alone _____ Judge alone on a transcript _____

6. Did you testify at your trial?

Yes _____ No _____

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes _____ No _____

(b) Preliminary hearing Yes _____ No _____

(c) Time of plea Yes _____ No _____

(d) Trial Yes _____ No _____

(e) Sentencing Yes _____ No _____

(f) Appeal Yes _____ No _____

(g) Other post-conviction proceeding Yes _____ No _____

8. Did you appeal your conviction?

Yes _____ No _____

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes _____ No _____

Year: _____ Result: _____

Supreme Court of California Yes _____ No _____

Year: _____ Result: _____

Any other court Yes _____ No _____

Year: _____ Result: _____

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes _____ No _____

(c) Was there an opinion? Yes _____ No _____

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes _____ No _____

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes XX No _____

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: Los Angeles County Superior Court

Type of Proceeding: habeas corpus

Grounds raised (Be brief but specific):

a. SAME AS RAISED HEREIN

b. _____

c. _____

d. _____

Result: denied Date of Result: 8/15/2007

II. Name of Court: App. Ct. of Calif., 2nd App. Dist.

Type of Proceeding: habeas corpus

Grounds raised (Be brief but specific):

1 a. SAME AS RAISED HEREIN

2 b. _____

3 c. _____

4 d. _____

5 Result: denied Date of Result: 11/2/2007

6 III. Name of Court: California Supreme Court

7 Type of Proceeding: Petition for Review

8 Grounds raised (Be brief but specific).

9 a. SAME AS RAISED HEREIN

10 b. _____

11 c. _____

12 d. _____

13 Result: denied Date of Result: 1/3/2008

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____

18 b. _____

19 c. _____

20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No XX

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

need more space. Answer the same questions for each claim.

Claim I

IT WAS A VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS GUARANTEED BY THE FIFTH AND FOURTEENTH AMEDMENTS TO THE UNITED STATES CONSTITUTION WHEN THE BOARD OF PAROLE HEARINGS DECISION FINDING HIM UNSUITABLE FOR PAROLE WAS NOT SUPPORTED BY ANY EVIDENCE THAT PETITIONER IS A CURRENT THREAT TO PUBLIC SAFETY TWENTY-SIX YEARS AND SEVEN PAROLE HEARINGS AFTER THE COMMITMENT OFFENSE, THE DECISION BEING ARBITRARY AND CAPRICIOUS.

S U P P O R T I N G F A C T S

The Plea Agreement

On August 11, 1980, Victor Montez (hereafter Petitioner) was arrested for the murder of Michael Stewart, the murder occurring on August 10, 1980.

In an "information" alleging several charges, all of which but one were dropped (EXHIBIT 1), Petitioner was charged with "murder" in violation of Penal Code § 187.^{1/} The charge being for the minimum elements of the offense, that is, Petitioner, "with malice aforethought (did) murder Michael Stewart, a human being."

On March 26, 1982, after being advised of his constitutional rights, primarily to trial by jury, confront witnesses and cross-examination, and the right to present a defense (EXHIBIT 2, pp. 4-5), Petitioner entered into a stipulated plea agreement, a contract, with the state of California to one count of second degree murder; that is, "did unlawfully kill another human being with malice aforethought" with the use of a firearm in violation of Penal Code § 12022.5 (EXHIBIT 2, p. 6, 7). In negotiating the plea, it was

1. All codes and regulations are California, unless otherwise noted. California Code of Regulations, Title 15, will be cited, Cal. Code Regs., tit. 15.

proffered that the murder of Mr. Stewart "was an unfortunate situation...that Mr. Montez never intended to kill the victim; that this was strictly an accident" (EXHIBIT 2, p. 9). There was no objection by the prosecution.

On March 26, 1982, Petitioner was sentenced to 15 years to life plus two years for the use of a firearm, to be served consecutively (EXHIBIT 3), being credited with 648 days in custody, plus 324 days good time credits, for a total of 972 days preconviction credit (EXHIBIT 4). A probation officer's report (POR) (EXHIBIT 5) was filed in conjunction with sentencing.

The Parole Hearing

On May 31, 2006, Victor Montez (hereafter Petitioner) appeared before the Board of Parole Hearings (hereafter Board) for his SEVENTH parole suitability hearing. Petitioner's minimum eligible parole date (MEPD) was fixed at April 9, 1990 (EXHIBIT 6, HT 1:7-16).^{2/}

Petitioner was sworn to tell the truth (HT 8:3-7).

The commitment offense

The facts of Petitioner's commitment offense were read into the record, being taken from Petitioner's Life Prisoner Evaluation Report (LPER) from June 2002 (EXHIBIT 7), reading from the LPER at HT 8:17-9:26:

On August 9, 1980, Montez and two women, one of whom was his wife, were on their way to Oxnard when their vehicle became disabled. The two women began to hitchhike on the Ventura Freeway while Montez hid in the bushes. It was agreed that the two women would appear as two females stranded on the freeway while Montez would approach the motorist who stopped and exhibit a firearm he carried in his waistband. The victim, Michael Stewart stopped for the women. The women entered the rear seat while beckoning to Montez who was still hiding in the

2. Reference to parole hearing transcript will be designated by HT followed by page and, when necessary, line number, e.g., (HT 1:1).

bushes. He ran to the car and brandished a small caliber firearm and entered the rear seat of the car. He pointed the firearm at the back of the victim's head and told him to drive them to Oxnard or he would kill him. Montez then fired, striking and killing the victim. Montez exited the car, dragged the body from the car and secreted the body beneath an overhanging tree and shrubs. After leaving the body, Montez, his wife and the other female companion drove the victim's car to Oxnard.

Petitioner "basically concurs with the report" (HT 10:3), with few exceptions; those exceptions being that "he never threatened the victim, in fact he offered the victim money for gas" (HT 10:4-6), Petitioner did have the gun pointed at the victim's head, but "believes the gun fired when the victim adjusted himself in the car seat and his elbow knocked the gun" (HT 10:6-11), Petitioner has no "intention to kill the victim" (HT 10:12-13), and "he never threatened the witness with violence if she contacted the police as is alleged" (HT 10:20-24). The facts of the offense are immutable and have remained consistent since the POR (EXHIBIT 5, pp. 6-10).

Prior criminal history

The Board reviews Petitioner's prior criminal history, starting with his juvenile record. Petitioner has no convictions as a juvenile (HT 11:16-24). As an adult, on April 26, 1973, given one year summary probation for entering non-commercial dwelling, while in custody for possession of marijuana charge, on October 19, 1973, convicted of sales and transportation of marijuana, January 7, 1974, Petitioner was convicted of "possession of marijuana and sent to CYA (HT 12:5-7), and has a conviction for "theft from motor vehicle" in the state of New Mexico, being released from custody on April 22, 1978 (HT 12:5-17; EXHIBIT 5, p. 5). None of Petitioner's prior convictions were serious or violent offenses.

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Prior social history

Petitioner began smoking marijuana at the age of 13, and started using heroin on weekends, progressing to a \$200 a day habit by the age of 15 and would take Valium when heroin was not available (HT 14:8-15:2).

Petitioner dropped out of school at age 16 and entered Job Corps, remaining there eleven months learning to operate heavy equipment (HT 15:3-14).

From the Job Corps, Petitioner entered the United States Army, serving as a paratrooper in the Special Forces, being honorably discharged in 1972 (HT 15:14-26). Petitioner stayed free of drugs while in the military and believes he should have stayed in the military (HT 16:1-4).

While incarcerated in New Mexico, Petitioner earned his GED (HT 16:6-7). Petitioner earned certification as a welder during that time, also (HT 16:9-10).

Petitioner lived with a woman for approximately one year in New Mexico (HT 16:11-13), then returned to California where he met and entered into a relationship with Denise Garcia, marrying her in April, 1980, assuming responsibility for her two children, then having a daughter together (HT 16:14-17). Petitioner is now a grandfather (HT 17:5-8), and although divorced from his wife, who was also his crime partner in the instant offense, remains in contact and has support of his children (HT 33:19-20).

Prior to the instant offense, Petitioner was employed as a roofer (HT 18:2-10).

Petitioner believes he had a good family life growing up

Postconviction behavior

It was noted that Petitioner has been "extremely active" since his 2002 hearing (HT 24:18-20), having completed two certifications from Federal Emergency Management in Emergency Preparedness, and Radiological Emergency Management (HT 24:21-24). Petitioner received three laudatory chronos for participation in the Prison Industries Authority employability program (HT 24:24-27), and sixteen laudatory chronos for his continued participation in Alcoholics Anonymous and Narcotics Anonymous (HT 25:1-3).

Petitioner completed a thirteen week IMPACT workshop (a victim's awareness self-help group) (HT 25:9-11).

Although Petitioner has disciplinary write-ups, the last one being in 1993, "there are no write-ups for violence or weapons" (HT 25:24-25).

Petitioner has received "exceptional and above-average work reports" on his job in the furniture factory (HT 25:25-26:5).

Psychological evaluation

Petitioner's psychological evaluation, dated May 11, 2006 (EXHIBIT 8), was prepared by Dr. Macomber, one of the Board's own forensic experts. Highlighting relevant factors, the Board notes: "Dr. Macomber writes that in the past based upon your criminal history you had been diagnosed as having antisocial personality disorder. But at this point in your life there is no evidence of any antisocial thinking or values. That your values are solidly pro-social, you have deep feelings of concern and empathy toward others" and the diagnostic label of antisocial is no longer appropriate (HT 28:7-17; EXHIBIT 8, p. 2). Petitioner has a Global Assessment of Functioning

(HT 18:21-24); there was no abuse in the home (HT 19:1-11).

Parole plans

Petitioner will parole to his mother's home in Oxnard, which she owns (HT 19:15-22), and she will help financially and in any way she can (HT 35:13-20). Petitioner has a firm offer of employment from Ideal Upholstery in Ventura where he will start at \$9.00 an hour (HT 20:6-20). Petitioner has alternative plans, arranging for an interview with a live-in program at the Ventura County Rescue Mission, with the requirements for admittance laid out for the Board (HT 22:23-23:13). Petitioner's daughter will provide housing, and, as her husband is starting his own business, the possibility of employment for Petitioner (HT 36:7-14).

Petitioner also has the support of Martha Duran, a woman whom he married while incarcerated, now divorced (due to the pressures of incarceration), residing in Oxnard and offering housing, and all the support "required so he can be a productive member of society" (HT 37:10-26), the Board finding this to be "very good" (HT 38:1).

Petitioner went to the effort to contact several organizations in the community that can provide housing and other services to re-enter society successfully, California Veterans Assistance, Lutheran Social Services of Southern California, and New Directions of Los Angeles, as well as a pamphlet from Prison Industry Authority of job placement assistance and other services through parole services (HT 39:15-40:11).

Additionally, not only is Petitioner a certified welder and heavy equipment operator, but since being incarcerated, among other vocational trades, has obtained certification as a paralegal (HT 48:11-13).

(GAF) Score of 90 (EXHIBIT 8, p. 3 [the highest score possible, relating to global social functioning]).

Most importantly, relating to current threat to public safety, covered at HT 28:26-29:20, Petitioner quotes directly from Dr. Macomber's evaluation (EXHIBIT 8, pp. 3-4), under assessment of dangerousness:

In considering potential for dangerous behavior when released to the community, the Level of Service Inventory-Revised was administered. This is an actuarial measure that assesses criminal history, substance abuse history, institutional adjustment, social relationships and other factors to determine current risk on parole. He obtained a score of 5.1 cumulative frequency for prison inmates. This means that of 1000 men were released on parole, he would do better on parole than 95 of them. This is a low risk score. At this point in his life, due to maturity, growth, and increased insight, he poses no more risk to society than the average citizen in the community. In fact, based on the positive changes in his life, he probably poses less risk to society than the average citizen.

In response, the Board cogently stated: "That's a conclusion I won't disagree with but that's certainly open to discussion at some other time" (HT 29:20-22, emphasis added). The Board continues, "Under clinical observations and recommendations the doctor writes that prognosis for successful adjustment in the community is excellent" (HT 29:22-25; EXHIBIT 8, p. 4).

Correctional officials agree that Petitioner "would probably pose a low degree of threat to the public at this time, if released from prison" (EXHIBIT 7, p. 4, [that was two years prior]).

Opposition to parole

The deputy district attorney representing Los Angeles County, after reiterating the facts of the case (HT 41:20-44:18), believing Petitioner's substance abuse is merely in "institutional remission (HT 45:2-7), and being critical of Petitioner exercising his constitutional right not to discuss the case or incriminate himself, believing that demonstrates failure to accept responsibility for

the offense (HT 45:7-15), opposed parole (HT 45:20-21).

D E C I S I O N

In concluding that Petitioner is "not suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety" if released from prison (HT 53:12-15), the Board relied on the following findings:

1. The commitment offense, feeling "that the offense was carried out on an especially cruel manner" (HT 53: 21-22), stating the victim "was shot in the head after he stopped to render aid in what he thought were two individuals that were in distress along the side of the freeway" (HT 53:22-26); being "carried out in a very dispassionate and calculated manner" (HT 54:1-2), putting "the two women out on the freeway as a lure and that you were hiding in the bushes and unfortunately it was Mr. Stewart that was the first Samaritan that decided to stop and help. The victim was defiled after the offense in that he was stripped...(HT 54:3-12 [there is absolutely no evidence, and Petitioner denies, that Mr. Stewart was stripped of the clothing he was wearing, see EXHIBIT 5, pp. 6-7]); and the motive "was very trivial" (HT 54:14), in that the "worst case scenario you could have just ordered him out to the side of the freeway but that's neither here nor there at this point n time" (HT 54: 15-18). The Board then reread the statement of facts into the record (HT 54:21-56:3).

2. Prior criminal history, stating Petitioner had "an escalating pattern of criminal conduct and that you had failed previous grants of probation...previous attempts to correct your criminality through the CYA commitment" (HT 56:4-20), citing Petitioner's dismissed

charges and non-violent criminal convictions (HT 56:1216).

3. Parole plans needed to be shored up, the Board completely ignoring the offer of residence and financial support from Petitioner's mother (HT 19:15-22) and confirmed job offer (HT 20:6-20), criticizing the halfway houses Petitioner contacted as not being satisfactory (HT 56:23-57:3), stating that Petitioner needs a backup plan with a member of his family, which he has, and being critical of the offer of residence and assistance from Ms. Duran whom Petitioner married and divorced while incarcerated (HT 57:21-23), finally stating "[i]t might be fine with the next Board but from my experience with the parole division they probably would not approve that" (HT 58:16-19).

4. "[T]he representative from the Los Angeles County District Attorney's Office indicating opposition to parole" (HT 58:2-5).

The only two factors considered in Petitioner's favor for parole suitability were: (1) "As far as your institutional behavior you have programmed very well" (HT 56:16-18); and (2) "[s]o far as the psychological report prepared by Dr. Macomber in May 1006, it's favorable" (HT 56:22-23). In reference to programming very well and Petitioner's long ago disciplinary write-ups, the Board stated: "They are not an issue at least with this panel and I can't see them being an issue with the next panel you come before" (HT 60:24-61:1).

The Board recommended that Petitioner "continue in your AA/NA, whichever is available, and continue to earn positive chronos" (HT 58:7-9).

In reference to the offense being "carried out in a dispassionate and calculated manner" see EXHIBIT 9, defining "execution-type murders" - victim bound and made to kneel....

J U D I C I A L P R O C E E D I N G S

The Board's decision became final on September 28, 2006 (EXHIBIT 6, HT 61), and Petitioner filed his writ of habeas corpus in the Superior Court of California, Los Angeles County, on January 2, 2007, 96 days hence, being denied on August 15, 2007 (EXHIBIT 10).

In affirming the Board's decision, the State court opined that "there is some evidence to support the Board's finding that 'the motive for the crime is inexplicable or very trivial in relation to the offense' (Cal. Code Regs., tit. 15, §2402(c)(1)(E).) The Board was justified in concluding that this motive is materially less significant [] than those motives which conventionally drive people to commit murder, thus indicating that petitioner poses a greater risk to society if released than is ordinarily present" (EXHIBIT 9, pp. 1-2). The State court also opined that "the record reflects that petitioner had an unstable social history prior to the commitment offense, which is a factor tending to indicate unsuitability for parole (Cal. Code Regs., tit. 15, §2402, subd. (c)(3))"; the State court then citing Petitioner's preconviction drug use, convictions for non-violent offenses, then concluded, "He dropped out of high school when he was sixteen years old. Heavy drug use, school problems, and prior criminality are some evidence of an unstable social history" (EXHIBIT 10, p. 2). (Petitioner did not drop out of high school because of drug use or school problems, but to join Job Corps, after which he joined the United States Army and honorably discharged.)

On September 21, 2007, Petitioner filed a habeas corpus in the California Court of Appeals, Second Appellate District. The writ

was summarily denied on November 2, 2007 (EXHIBIT 11).

On November 9, 2007, Petitioner filed in the California Supreme Court a Petition for Review, being summarily denied January 3, 2008 (EXHIBIT 12).

Total days from date of the Board's decision becoming final and State court remedies being exhausted is 481 days, with 341 of those days tolled, for a total of 140 untolled days.

* * * * *

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

All claims have been exhausted.

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 SEE MEMORANDUM OF LAW ATTACHED HERETO, pp. 17-24

5
6
7 Do you have an attorney for this petition?

Yes____ No XX

8 If you do, give the name and address of your attorney:
9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on

29 Jan. 2008
Date

Victor M. Montez
Victor M. Montez
Signature of Petitioner

14
15
16
17
18
19
20 (Rev. 6/02)

M E M O R A N D U M O F L A W

A. Jurisdiction of the Court

Whether Petitioner is limited to 365 days after the Board's decision becomes final minus tolled time while exhausting state remedies, or 365 days, or plus 60 days to file certiorari after the California Supreme Court decision is final, Petitioner's federal writ is timely filed, thus the Court has jurisdiction.

B. Liberty Interest in Parole

It is crystallized, California's indeterminately sentenced prisoners have a liberty interest in parole (Greenholtz v. Inmates of Nebraska Penal and Correctional Complex (hereafter Greenholtz), 441 U.S. 1 (1979); In re Rosenkrantz, 29 Cal.4th 616, 654-656 (2002); Sass v. California Board of Prison Terms (hereafter Sass), 461 F.3d 1123 (9th Cir. 2006); Irons v. Carey, 479 F.3d 658 (9th Cir. 2007)). Respondent should be warned from raising or making any meritless and frivolous argument to the contrary and wasting the Court's limited time and resources.

C. There Is No Evidence Petitioner, Being Convicted of Second Degree Murder and Sentenced to an Indeterminate Term of 15 Years to Life, is CURRENTLY Dangerous Twenty-Six Years After the Commitment Offense.

Dr. Macomber, the Board's own forensic expert, stated, in his considering Petitioner's social history, prior criminal history, parole plans, and rehabilitation, in his expert opinion: "due to maturity, growth, and increased insight, he poses no more risk to society than the average citizen in the community. IN fact, based on the positive changes in his life, he probably poses less risk to society than the average citizen" (EXHIBIT 8, pp. 3-4). The Board

agreed: That's a conclusion I won't disagree with but that's certainly open to discussion at some other time" (HT 29:2-22). It is time for that discussion and the Board to present some evidence, any evidence, that, absent contravening evidence that does not exist, Petitioner is currently an unreasonable parole risk. The focus of parole suitability, therefore, is rehabilitation -- as articulated by the United States Supreme Court: "The decision turns on...primarily what a man is and what he may become rather than simply what he has done" (Greenholtz, 442 U.S., at 10, supra). Thus, REHABILITATION could be said to be the Greenholtz doctrine. If there is no evidence Petitioner is a CURRENT threat to the public, he is to be paroled.

Petitioner has always maintained that shooting of the victim was accidental, but has never tried to diminish his responsibility, always knowing full well that but for having a gun in his hand in the first place Mr. Stewart would still be alive today. At no time has the prosecution ever contested or disagreed that the killing of Mr. Stewart was accidental, taking place in August, 1980, 26 years prior to the parole suitability hearing at bench becoming final.

Petitioner's minim eligible parole date (MEPD) was fixed to be April 9, 1990 (HT 1:7-16), thus at the time of the hearing at bench Petitioner was 16 years past his MEPD. Case at bench is distinguishable from Irons v. Carey, 479 F.3d 658 (9th Cir. 2007), explaining that Irons minimum term was 17 years on his 17 years to life sentence (Id., at 662, 665), in that Irons' offense occurred in 1984. Petitioner's offense occurring, and being sentenced pursuant to Penal Code § 190 (In re Diaz, 13 Cal.App.4th 1755, 1760 (1993), prior to January 1, 1983, "(commencing with Section 2930)...shall

apply to reduce the minimum term of 15 or 25 years in the state prison imposed pursuant to this section, but the person shall not otherwise be released on parole prior to that time[,]" he has a "liberty interest" in Penal Code § 2931 credits to reduce his minimum term on the second degree murder conviction from 15 years to 10 years.

After midnight, December 31, 1982, the § 2931 credit statute was repealed (Penal Code § 2931(d) ["This section shall not apply to any person whose crime was committed on or after January 1, 1983"]),. On and after January 1, 1983, the custody credit statute was Penal Code § 2933, the credits being "a privilege, not a right" (§ 2933(b)). The difference being § 2933 is an earning statute, while § 2931 was a giving statute, giving Petitioner a "liberty interest" in the sentence reduction credits (Greenholtz, 442 U.S. 1, 4 (1979) ["An inmate becomes eligible for discretionary parole when the minimum term, less good-time credits, has been served"]; see also Toussaint v. McCarthy, 801 F.2d 1080, 1085 (9th Cir. 1986) ["section 2931 creates a constitutionally protected liberty interest"]),.

Thus, Petitioner, at the time of the hearing at bench, was sixteen (16) years past his minimum term for second degree murder, and one year past the minimum term for first degree murder in calendar years, or, applying § 2931 credits, 10 years past the minimum term for first degree murder.

a. The Commitment Offense Is Not Reliable Evidence

"The Governor's assumption that a prisoner may be deemed unsuitable for release on the basis of the commitment offense 'alone' is correct (citation), [] but the proposition must be properly

understood. The commitment offense is one of only two factors indicative of unsuitability a prisoner cannot change" (In re Scott II, 133 Cal.App.4th 573, 594-595 (2005)). "Reliance on such an immutable factor 'without regard to or consideration of subsequent circumstances' may be unfair (citation), and 'runs contrary to the rehabilitative goals espoused by the prison system and could result in a due process violation.'" (Biggs v. Terhune, [] 334 F.3d [910], 917 [9th Cir. 2003])," (In re Scott II, 133 Cal.App.4th, at 595, supra; In re Elkins, 144 Cal.App.4th 475, 496 (2006)). "Therefore, a life term offense or any other offenses underlying an indeterminate sentence must be particularly egregious to justify the denial of a parole date" (In re Rosenkrantz, 29 Cal.4th, at 683, supra, citation omitted, emphasis added). However, although initially the egregiousness of the offense may be used to deny parole, after 15 to 20 years the commitment offense in and of itself loses probative value in predicting current or future dangerousness (In re Roderick, 154 Cal.App.4th 242, 277 (2007); In re Lee, 143 Cal.App.4th 1400, 1412 (2006); In re Scott II, 133 Cal.App.4th, at 595, supra; Rosenkrantz v. Marshall, 444 S.Supp.2d 1063, 1084 (C.D. Cal. 2006)).

The Ninth Circuit Court of Appeals recently concluded the suitability and unsuitability factors set out in Cal. Code Regs., tit. 15, § 2402(c) and (d), in the precedent setting case of Hayward v. Marshall, ___ F.3d ___, 2008 U.S. App. LEXIS 40, *17-18 (9th Cir. 2008):

"Even though these suitability and unsuitability factors are helpful in analyzing whether a prisoner should be granted parole, California courts have made it clear that the 'findings that are necessary to deem a prisoner unsuitable for parole,' Irons [v. Carey], 505 F.3d [846,] at 851 [(9th Cir. 2007)], 2007 WL 2927359, at *3, are not that a particular factor or factors indicating unsuitability exists, but that a prisoner's release will unreasonably endanger public safety.

In re Dannenberg, 156 Cal.App.4th 1387, 2007 WL 3408290, *9 (Cal. Ct. App. 2007), modified, 2007 Cal. App. LEXIS 1985, 2007 WL4227229 (Cal. Ct. App. Dec. 3, 2007); In re Lee, 143 Cal.App.4th 1400, 1408, 49 Cal.Rptr.3d 931 (Cal. Ct. App. 2006); In re Scott, 133 Cal.App.4th 573, 595, 34 Cal.Rptr.3d 905 (Cal. Ct. App. 2005); see Cal. Penal Code § 3041(b) (providing that the Board 'shall set a release date unless...consideration of the public safety requires a more lengthy period of incarceration for this individual'). For our purposes, then, '[t]he test is not whether some evidence supports the reasons the Governor cites for denying parole, but whether some evidence indicates a parolee's release unreasonably endangers public safety. Some evidence of the existence of a particular factor does not necessarily equate to some evidence the parolee's release unreasonably endangers public safety.' Lee, 143 Cal. App.4th at 1408 (citations and footnotes omitted); see also In re Elkins, 144 Cal.App.4th 475, 499, 50 Cal.Rptr.3d 503 (Cal. Ct. App. 2006) (holding that the 'governor, in reviewing a suitability determination, must remain focused...on facts indicating that release currently poses 'an unreasonable risk of danger to society'' (citing Cal. Code Regs. tit. 15, § 2402(a)); Scott, 133 Cal.App.4th at 591 ('The factor statutorily required to be considered and the overarching consideration, is "public safety.'" (citing Cal. Penal Code § 3041(b)))" (emphasis and ellipses in original).

It has never been contested that the killing of Mr. Stewart was accidental, Petitioner's gun accidentally firing when Mr. Stewart moved his seat and hit Petitioner's arm, a very tragic accident and one Petitioner fully accepts responsibility for, but the offense, under the circumstances, could not have been "dispassionate and calculated" as the Board declared (HT 54:1-2; Cal. Code Regs., tit. 15, § 2402(c)(1)(B) ["The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder"]). The accidental killing of Mr. Stewart does not fit the definition of "execution-style murder" (see EXHIBIT 12).

Moreover, "calculated" denotes planning and premeditation. In that Petitioner was convicted of second degree murder, in a plea agreement "stipulated" to the minimum elements of the offense (EXHIBIT 2, p. 5), the State is now precluded from retrying the case and finding elements of first degree murder, especially when those elements were not there to begin with (In re Gray, 151 Cal.App.4th 379, 405-407; Brown v. Kane, Slip Copy, 2007 WL 1288488, *7 (N.D.

Cal. 2007), ["characterization of Petitioner's actions as premeditated is incorrect because the trial court found that the offense was murder in the second degree"]).

The Board also found that Mr. Stewart "was defiled after the offense in that he was stripped, his body was concealed along the shoulder of the Ventura Freeway and just basically left in the shrubbery" (HT 54:8-12). Concealing the body is not being "defiled"; and, there is absolutely no evidence that Mr. Stewart was "stripped" of his clothing. The evidence points to the contrary (EXHIBIT 5, pp. 67 ["The victim's pants were open and partially down, the zipper was partially broken and the top button pulled off"]). This most likely occurred when Mr. Stewart was dragged out of his car and across the ground, but he certainly was not "defiled," that is, raped (see People v. Moore, 196 Cal.App.2d 91 (1961), definition of defiled).

b. The State Court Decision Is Unreasonable In Light Of The Facts.

When comparing the Board's decision to the decision of the State court, last "reasoned" decision, it is apparent the state court made findings to justify its decision the Board did not make.

After reciting the Board's decision, the state court adds (EXHIBIT 9, p. 2):

"Additionally, the record reflects that petitioner had an unstable social history prior to the commitment offense, which is a factor tending to indicate unsuitability for parole. (Cal. Code Regs., tit. 15, § 2402(, subd. (c)(3).) Petitioner began using heroin when he was thirteen years old. He eventually developed a \$200 a day habit. He was first arrested at the age of thirteen and had several more arrests as an adult, leading to sentences of probation and state prison in New Mexico. He dropped out of high school when he was sixteen years old. Heavy drug use, school problems, and prior criminality are some evidence of an unstable social history. (In re Van Houton (2004) 116 Cal.App.4th 339, 353)."

Firstly, the regulations "distinguish[] between criminal history (§ 2402, subd. (b)) with the latter being defined in terms of social

relationships (§ 2402, subd. (c)(3)), as distinguished from criminal activity. The two factors are thus distinct and should not be conflated" (In re Roderick, 154 Cal.App.4th, at 269, supra).

Secondly, arrests alone do not constitute prior offenses or constitute reliable evidence of criminal misconduct. Petitioner is presumed innocent until proven otherwise (Penal Code § 1096). This presumption of innocence is a fundamental principle of our criminal justice system (Estelle v. Gamble, 425 U.S. 501, 503 (1976)). Petitioner, as a juvenile, was arrested for malicious mischief and having marks on his arm, ages 9 and 13 respectively (EXHIBIT 5, p. 4). As an adult, Petitioner was arrested for burglary, dismissed; a second burglary, dismissed; a battery, dismissed, leaving two drug related convictions, entering a non-commercial building, and theft from a motor vehicle (EXHIBIT 5, p. 5). Thus, Petitioner's prior, non-violent, criminal history are not crimes that constitute a previous record of violence within the definition of the regulations (Cal. Code Regs., tit. 15, § 2402(c)(2). To the contrary, in that Petitioner "lacks any significant history of violent crime" (Cal. Code Regs., tit. 15, § 2402(d)(6)), it tends to militate toward suitability for parole.

It appears the state court was bent on denying Petitioner's writ looking for "any evidence" rather than whether the evidence was sufficient to show a current threat and went in search of makeweight justifications to do so. The courts cannot be silent parole commissioners and make findings the Board did not make. "Given the extraordinarily deferential standard of review we (the courts) already apply to the Board's decisions, it would be inappropriate for courts to salvage the Board's inadequate findings by inferring

factors that might have been relied upon" (In re Roderick, 154 Cal.App.4th, at 265, supra). Yet, that's exactly what the state court did in case at bench, demonstrating a bias. Therefore, this Court should review the evidence de novo.

C O N C L U S I O N

"Not only does the passage of time in prison count for something, exemplary behavior and rehabilitation in prison count for something according to Biggs and Irons. Superintendent v. Hill's standard might be quite low, but it does require the decision not be arbitrary, and reliance on only the facts of the crime might eventually make for an arbitrary decision" (Willis v. Kane, 458 F.Supp.2d 1126, 1130 (N.D. Cal. 2007); In re Roderick, 154 Cal.App.4th, at 277, supra). As warned by the Ninth Circuit: "in some cases, indefinite detention based solely on an inmate's commitment offense, regardless of the extent of his rehabilitation, will at some point violate due process, given the liberty interest in parole that flows from relevant California statutes" (Irons v. Carey, 505 F.3d 846, 854 (9th Cir. 2007); Hayward v. Marshall, 2008 U.S. App. LEXIS 40, *23, supra). After 26 years on what by all accounts was a tragic accidental shooting, Petitioner's rehabilitation and uncontroverted forensic evidence cogently favorable to parole, Petitioner being less of a threat than the average citizen, the Board, and state court, abused its discretion, denying Petitioner due process of law. Petitioner is entitled to relief.

WHEREFORE, it is respectfully requested that the writ be GRANTED and the Board ordered, unless there is new evidence since Petitioner's 2006 parole suitability hearing that would preponderate toward

unsuitability, to conduct a new hearing within ten (10) days and fix Petitioner's term proportionate and uniform to his culpability for second degree murder, and, that any and all excess custody credits be applied to his period of parole he may serve. Moreover, in that the Governor is bound by the same factors the Board is bound by, hold, if there is no evidence Petitioner is a current threat for the Board based on the evidence and factors, that neither can there be evidence for the Governor, therefore expecting Petitioner to be paroled.

DATED: 29 Jan. 2008

Respectfully submitted,

Victor M. Montez
Victor M. Montez
Petitioner in pro se

E X H I B I T 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

255

The People of the State of California,

Plaintiff,

No. A146105

v.
VICTOR MANUEL MONTEZ
and
DENISE MARIE MONTEZ,

Defendants

INFORMATION

MURDER (Sec. 187, P.C.) - Ct. I
ROBBERY (Sec. 211, P.C.) - Ct. II
ATTEMPTED KIDNAPPING (Sec. 664/209,
P.C.) - Ct. III

The said VICTOR MANUEL MONTEZ and DENISE MARIE MONTEZ

are

accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of MURDER, in violation of Section 187, Penal Code of California,

a felony, committed as follows: That the said VICTOR MANUEL MONTEZ and DENISE MARIE MONTEZ

on or about the 10th day of August, 1980, at and in the County of Los Angeles, State of California, did willfully and unlawfully, and with malice aforethought murder Michael Stewart, a human being.

It is further alleged that the murder of Michael Stewart was committed by defendant VICTOR MANUEL MONTEZ while the defendant was engaged in the commission of robbery in violation of Penal Code Section 211 within the meaning of Penal Code Section 190.2(a)(17).

It is further alleged that the murder of Michael Stewart was committed by defendant DENISE MARIE MONTEZ while defendant was an accomplice in the commission of robbery in violation of Penal Code Section 211, within the meaning of Penal Code Section 190.2(a)(17).

It is further alleged that the murder of Michael Stewart was committed by defendant VICTOR MANUEL MONTEZ while the defendant was engaged in the attempted commission of kidnapping in violation of Penal Code Sections 207 and 209, within the meaning of Penal Code Section 190.2(a)(17).

SEE SPECIAL ALLEGATIONS CONTINUED ON ATTACHED SHEET

Filed in open Superior Court of the State of California, County of Los Angeles, on motion of the District Attorney of said County.

DATED:

JOHN J. CORCORAN, Clerk

By

Deputy

JOHN K. VAN DE KAMP, District Attorney
for the County of Los Angeles, State of California
By _____

Deputy

761550A1-Rev. 7-77-PS 8-77

Filed in open Superior Court of the State of California, County of Los Angeles, on motion of the District Attorney of said County.

DATED:

JOSEPH A. BUSCH, District Attorney
for the County of Los Angeles, State of California
By _____

Deputy

E X H I B I T 2

ORIGINAL FILED

APR 15 1982

COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NW R

HON. DAVID A. HOROWITZ, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

VICTOR MANDEL MONTEZ,
DENISE MARIE MONTEZ,

Defendants.)

NO. A 146 105

PLEA

VAN NUYS, CALIFORNIA, FRIDAY, MARCH 26, 1982, 9:25 A.M.

Upon the above date, the defendants being present in court and represented by counsel, CARL BURKOW, Esq. representing defendant Victor, IRWIN PRANSKY, Deputy Public Defender of the County of Los Angeles representing defendant Denise, the people being represented by IRVIN COHEN, Deputy District Attorney of the County of Los Angeles, the following proceedings were held:

(Bonnie Frankfurt, Official Reporter, CSR #2322.)

THE COURT: 203, 204, Victor Montez and Denise Marie

1 Montez.

2 MR. PRANSKY: Your Honor, at this time I believe the
3 District Attorney has gotten together and has understood what
4 the plea agreement is.

5 MR. COHEN: That is correct. I have conferred with Mr.
6 Weisberg and it is my understanding that --

7 THE COURT: Can you hear?

8 A DEFENDANT: Not that good.

9 THE COURT: Speak up, Mr. Cohen.

10 MR. COHEN: Yes, Your Honor.

11 Since the matter was previously called, I have
12 discussed the case with Mr. Weisberg who is the trial Deputy
13 District Attorney.

14 It is my understanding that it is agreeable
15 with the People that if the defendant Victor Montez withdraws
16 his previous plea of not guilty to a violation of Section 187
17 of the Penal Code, that being the charge of murder, and enters
18 a guilty plea to that charge as murder in the second degree
19 and admits the use of a firearm, to-wit, a handgun, that this
20 would be agreeable with the People.

21 The defendant's exposure to time in custody would
22 be from 17 years to life.

23 As to the defendant Denise Marie Montez, it is
24 the People's intention to add an additional count, violation of
25 Section 32 of the Penal Code, accessory after the fact.

26 It is my understanding the defendant Denise
27 Montez will enter a plea of guilty to that charge.

28 The maximum exposure to time in custody for

that charge is an open plea, and the maximum time she can serve is up to three years in the State Prison, the sentence being up to the court.

Have I accurately outlined the disposition of this case, Mr. Pransky?

MR. PRANSKY: Yes.

MR. COHEN: Mr. Burkow?

MR. BURKOW: Yes.

MR. COHEN: Mr. Montez, did you understand what I said concerning the disposition of this case?

DEFENDANT VICTOR MONTEZ: Yes, sir, I did.

MR. COHEN: Is it your desire to enter a plea as I outlined in the disposition?

DEFENDANT VICTOR MONTEZ: Yes, sir.

MR. COHEN: At this time do you withdraw your previous plea of not guilty to the murder charge so you can enter this plea?

DEFENDANT VICTOR MONTEZ: Yes, sir.

MR. COHEN: Has anyone made any other promises to you other than what I have said in open court to get you to enter this guilty plea?

DEFENDANT VICTOR MONTEZ: No, sir.

MR. COHEN: Mr. Pransky, may it be stipulated that an additional count be alleged as to your client, a violation of Section 32 of the Penal Code, that being the felony of accessory after the fact?

MR. PRANSKY: So stipulated.

MR. COHEN: Waive further reading of the amendment and

statement of rights as to the amendment?

MR. PRANSKY: So waive further reading.

MR. COHEN: Denise Montez, do you understand what I said as to the disposition of this case concerning yourself?

DEFENDANT DENISE MONTEZ: Yes.

MR. COHEN: Is that your desire to proceed in that manner?

DEFENDANT DENISE MONTEZ: Yes.

MR. COHEN: Has anyone made any other promises to you other than what I have said in open court to get you to enter this guilty plea?

DEFENDANT DENISE MONTEZ: No.

MR. COHEN: I must advise each of you that if you are not citizens of the United States that the entry of these guilty pleas may have the consequences of deportation, exclusion from admission to the United States or denial of naturalization pursuant to the laws of the United States.

If you are citizens of the United States, this would not apply to you.

Further, in order for each of you to enter these guilty pleas you must know, understand and give up certain constitutional rights.

Each of you have the right to a trial by jury or, if both sides agree, you can have a trial by the judge.

Each of you have a right to confront witnesses against you in open court and have your attorneys cross-examine these witnesses.

Each of you have a right to present a defense

1 by having witnesses brought into court who would testify for
2 you by using the subpoena powers of the court at no cost to
3 either of you.

4 Finally, each of you have the right against
5 self-incrimination. This means that neither of you have to say
6 anything against yourself.

7 Now, Mr. Victor Montez, have you discussed all
8 these rights with your attorney Mr. Burkow?

9 DEFENDANT VICTOR MONTEZ: Yes, sir, I have.

10 MR. COHEN: After discussing these rights with Mr.
11 Burkow, do you believe you understand them?

12 DEFENDANT VICTOR MONTEZ: Yes, sir.

13 MR. COHEN: Understanding these rights and knowing
14 that you must give them up in order to enter this guilty plea,
15 do you give up these rights?

16 DEFENDANT VICTOR MONTEZ: Yes, sir.

17 MR. COHEN: Mr. Burkow, join?

18 MR. BURKOW: Join in the waivers.

19 MR. COHEN: Denise Montez, have you discussed all these
20 constitutional rights with your attorney Mr. Pransky?

21 DEFENDANT DENISE MONTEZ: Yes.

22 MR. COHEN: After discussing these rights with Mr.
23 Pransky, do you believe you understand them?

24 DEFENDANT DENISE MONTEZ: Yes.

25 MR. COHEN: Understanding these rights and knowing
26 that you must give them up in order to enter this guilty plea,
27 do you give up these rights?

28 DEFENDANT DENISE MONTEZ: Yes.

1 MR. COHEN: Mr. Victor Montez, are you pleading guilty
2 or entering this plea freely and voluntarily?

3 DEFENDANT VICTOR MONTEZ: Yes, sir, I am.

4 MR. COHEN: Denise Montez, are you entering this plea
5 freely and voluntarily?

6 DEFENDANT DENISE MONTEZ: Yes.

7 MR. COHEN: Has anyone used any force or threats of
8 force for anything similar to that against either of you in
9 order to get you to enter these pleas, Victor Montez?

10 DEFENDANT VICTOR MONTEZ: No.

11 MR. COHEN: Denise Montez?

12 DEFENDANT DENISE MONTEZ: No.

13 MR. COHEN: Victor Montez, is it a correct statement
14 that in the county of Los Angeles you did unlawfully kill
15 another human being with malice aforethought? Is that what
16 you did?

17 DEFENDANT VICTOR MONTEZ: Pardon me?

18 MR. COHEN: Is that what you did?

19 DEFENDANT VICTOR MONTEZ: Yes, I did.

20 MR. COHEN: In the commission of this particular
21 offense, did you personally use a handgun?

22 DEFENDANT VICTOR MONTEZ: Yes, I did.

23 MR. COHEN: Counsel, stipulate to a factual basis for
24 the plea?

25 MR. BURKOW: Stipulate.

26 MR. COHEN: Denise Montez, is it a correct statement
27 that you knew after this murder had been committed that you
28 harbored concealed and aided your co-defendant with the intent

1 that your co-defendant avoided or escaped arrest, trial,
2 conviction or punishment for this offense?

3 Is that what you did?

4 DEFENDANT DENISE MONTEZ: Yes.

5 MR. COHEN: Counsel, stipulate to a factual basis for
6 the plea?

7 MR. PRANSKY: So stipulated.

8 THE COURT: Excuse me. Victor Montez, Mr. Montez, do
9 you understand that at the end of doing your actual time in
10 custody in the State Prison that you would be subject to parole?

11 Do you understand that?

12 DEFENDANT VICTOR MONTEZ: Yes.

13 THE COURT: Mrs. Montez, likewise if you should end up
14 in State Prison on this matter when you finish doing your
15 actual time in custody you also will be subject to parole.

16 Do you understand that?

17 DEFENDANT DENISE MONTEZ: Yes.

18 MR. COHEN: Victor Mandel Montez, in this case
19 A 146 105 to a violation of Section 187 of the Penal Code, that
20 being the felony of murder in the second degree, how do you
21 plead, guilty or not guilty?

22 DEFENDANT VICTOR MONTEZ: Guilty.

23 MR. COHEN: As to the allegation that in the commission
24 of this murder you personally used a firearm, do you admit or
25 deny that?

26 DEFENDANT VICTOR MONTEZ: I admit.

27 MR. COHEN: Counsel, concur in the plea?

28 MR. BURKOW: Concur.

1 MR. COHEN: Denise Marie Montez, to the violation of
2 Section 32 of the Penal Code, that being the felony of
3 accessory, after the fact, how do you plead, guilty or not
4 guilty?

5 DEFENDANT DENISE MONTEZ: Guilty.

6 MR. COHEN: Mr. Pransky, concur in the plea?

7 MR. PRANSKY: Counsel concurs in the plea.

8 THE COURT: All right. The court finds as to each
9 defendant they have knowingly, understandingly and intelligently
10 given up their constitutional rights. The plea is made freely
11 and voluntarily with an understanding of the nature and the
12 consequences thereof.

13 The court finds there is a factual basis for the
14 plea. The court accepts the plea.

15 MR. PRANSKY: April 21st, Your Honor?

16 THE COURT: 21, no. After the 23rd.

17 MR. PRANSKY: April 23rd?

18 THE COURT: 23rd. Probation and sentence hearing
19 April the 23rd, 9:00 o'clock. Both of you are ordered back at
20 that time.

21 MR. PRANSKY: Your Honor, I want to be heard as to bail
22 in this matter.

23 THE COURT: Go ahead.

24 MR. PRANSKY: Your Honor, bail in this matter has been
25 in excess of \$50,000.00. In addition thereto, there has been a
26 \$20,000.00 bail imposed upon my client on a misdemeanor matter
27 in Ventura County.

28 She has now entered a plea of guilty to an

1 offense which carries a maximum of three years. She has been
2 in custody for 19 months.

3 This matter has gone to the Court of Appeals
4 and it has gone up to the Supreme Court.

5 Immediately following the Supreme Court's
6 ruling, I started to negotiate this case with Mr. Weisberg,
7 and he came to an agreement that as to my client the worst that
8 they could ever prove would be an accessory after the fact.

9 This was an unfortunate situation. But I
10 honestly believe that Mr. Montez never intended to kill the
11 victim; that this was strictly an accident.

12 My client's wife or -- I should say, excuse
13 me -- the wife of Mr. Montez was present at the time, that she
14 was quite frightened. She was upset as well as Mr. Montez
15 being quite upset.

16 They did not know what to do under the
17 circumstances.

18 I think that it is only natural that a wife
19 would come to the assistance of her husband.

20 The extent of her being accessory after the
21 fact is driving the vehicle back to Oxnard where they had
22 originally -- where their original destination.

23 The victim had agreed to take them to Oxnard,
24 but unfortunately by accident he was killed.

25 The other part of this accessory after the
26 fact is that my client and her husband temporarily resided in
27 a motel for probably less than 24 hours.

28 I would urge the court, since she has done 19

months, the maximum that she would have to do would be three years.

Although she has a prior record, she has never been to State Prison and I don't believe she has any felony convictions.

What would probably be done in this particular case at the worst would be to impose the mid-term, because I cannot foresee any elements in aggravation.

Considering what her involvement was as a wife who was there to assist her husband under the worst of circumstances, if she got two years in the State Penitentiary she will have already served that time, since one does 16 months on two years.

If the court saw fit to place her on probation, she really would only have approximately five months more to do if she was ever incarcerated in the future.

I think Ventura County on a 6478 violation of probation has been totally unreasonable in setting a bail of over \$20,000.00.

By the court releasing her on her own recognizance, it would require the Ventura County to come and pick up Miss Montez, and she could clear up that matter prior to probation and sentencing.

I urge the court on behalf of Mrs. Montez to release her on her own recognizance. She has been in the county jail under the worst of circumstances because she has been charged with a 187. She was in a special barracks.

It was only recently that she was allowed to

work in the kitchen. Now she stands convicted of at least
serious of all felonies.

THE COURT: What is the People's position?

MR. COHEN: I have no idea what the People's position
is, Your Honor.

MR. PRANSKY: I would ask this: --

MR. COHEN: I was trying to get hold of Mr. Weisberg
to see what his position was. His line has been busy for the
last ten minutes while Mr. Pransky has been --

MR. PRANSKY: Additionally, I would add this, Your
Honor: That Mrs. Montez while she was incarcerated did give
birth. There is a child.

Her time should be reduced as quickly as
possible and she would like to get there as quickly as possible.

Under the totality of the circumstances, I
don't think the court would certainly be misplacing any
confidence or abusing its discretion by leaving her out OR.

THE COURT: Okay. Mr. Burkow, do you wish to be
heard on this matter?

MR. BURKOW: Yes, I do have an additional request.

THE COURT: Go ahead.

MR. BURKOW: I understand there is no opposition if
somehow there is a way they could visit today under --

THE COURT: They can visit today. It is agreeable
with me if it is agreeable with the sheriff.

MR. BURKOW: Could Your Honor request that through the
sheriff somehow that they be permitted to visit today? If
possible, prior to their being taken back --

1 THE BAILIFF: For a couple moments if th want to sit
2 here, yes.

3 MR. BURKOW: We were --

4 MR. PHANSKY: We were somewhat promised by Mr. Mayer
5 that they would have some time together.

6 THE COURT: Let's try to arrange that. Have you
7 heard from Mr. Weisberg?

8 MR. COHEN: No, I haven't, Your Honor. I am working
9 on it.

10 THE COURT: Let me hold that matter then. I want to
11 hear from the District Attorney.

12 MR. BURKOW: May I then be excused?

13 THE COURT: Yes, you are finished.

14 MR. BURKOW: Thank you, Your Honor.

15 MR. COHEN: Your Honor, on that matter I have just
16 spoken to Mr. Weisberg. His feeling is that the People oppose
17 an OR release.

18 THE COURT: Did he have any reason?

19 MR. COHEN: Apparently it is a State Prison case.

20 THE COURT: All right.

21 (Recess taken in this matter.)

22 11:25 A.M.

23 THE COURT: 204, Montez. All right. In this
24 matter Denise Montez on the OR motion --

25 MR. COHEN: Your Honor, in that particular matter
26 apparently it is Mr. Weisberg's position that she should not
27 be released on her own recognizance.

1 Apparently, there is just a very short time
2 until her sentence date. Mr. Weisberg's feeling is that there
3 is a good possibility if she is released on her own
4 recognizance she wouldn't report to the probation officer.

5 Further, that in the past she has had a failure
6 to appear in Ventura County, and also based on the nature of
7 the offense that she should not be released at this time.

8 MR. PRANSKY: In answer to that, Your Honor, as stated
9 by Mr. Burkow, there are so many equities in this particular
10 case that I overlooked probably the most important one is the
11 fact that she did while in custody give birth to a child who
12 is in the care of her mother.

13 Mrs. Montez has worked in the Oxnard area
14 almost all of her life. She has been informed that her mother
15 is ill, that the child is ill.

16 She failed to appear on that Ventura matter and
17 I think that is on the basis of failing to pay a fine.

18 I am sure that she has a very keen interest in
19 what happens to her husband as well as what happens to her.

20 There is just five months more that if she
21 would have to serve, if the court gave her the maximum.

22 I don't believe that there is any risk that
23 she would not come back to this court. If she has all those
24 matters cleared up in Ventura, and I anticipate that that would
25 summarily take care of the matter in Ventura.

26 THE COURT: All right. In this matter, the bail is
27 reduced to \$2,500.00. Motion to reduce to PR is denied.

28 MR. PRANSKY: Thank you.

29 (Proceedings adjourned.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NW R HON. DAVID A. BOROWITZ, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

VICTOR MANDEL MONTES,
DENISE MARIE MONTES,

Defendants.

NO. A 146 105

REPORTER'S
CERTIFICATE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, BONNIE FRANKFURT, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing is a true and correct transcript of all of the admonitions given and waivers and admissions taken at the time of the taking of the plea in the above-entitled cause.

Dated this 13th day of April, 1982.

LORENZINE BUREAU
RECORDS OFFICE
700 12 1985
DECEMBER

Bonnie Frankfurt

CSR #2331

Official Reporter

E X H I B I T 3

ORIGINAL FILED

JUL 13 1982

COUNTY CLERK

048815

FD

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NW R

HON. DAVID A. HOROWITZ, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

VICTOR MANUEL MONTEZ,

Defendant.

NO. A 146105

STATE PRISON

VAN NUYS, CALIFORNIA; FRIDAY, MAY 21, 1982; 10:20 A.M.

Upon the above date, the defendant being present in court and represented by counsel, CARL BURKOW, Esq., the People being represented by RALPH MAYER, Deputy District Attorney of the County of Los Angeles, the following proceedings were held:

(Alexandria Walsh, Official Reporter, CSR #4416.)

THE COURT: Number 302, Victor Montes.

As of April 23, he had 619 days actually served. What is the total now?

1 MR. BURKOW: As of -- I did not compute it from the
2 23rd of April on, but I think that today would make it another
3 29 days, which would make it 648 days.

4 THE COURT: Okay.

5 The court has read and considered the probation
6 report.

7 Waive arraignment for judgment?

8 MR. BURKOW: Yes, Your Honor. There is no legal cause.

9 THE COURT: Do you wish to be heard?

10 MR. BURKOW: I would just briefly ask the court to
11 understand one thing. I think the sentence is locked in as
12 far as the sentencing is concerned. I think that's pretty
13 much preordained. But I think on behalf of Mr. Montez I'd
14 be less than open with the court if I didn't indicate that this
15 individual is not the same individual who was arrested on the
16 night in question. He has undergone many, many changes.

17 He would hope that the court -- society would
18 somehow understand that. But at no time was it his intention
19 to have the incident/culminate in the way that it did. It's
20 bad enough that he admitted that there was a crime involved,
21 but it certainly in his mind had never but for an accident and
22 his rash judgment in having a weapon would have never ended
23 in the way that it did. He would hope that somehow the court
24 would understand that and the prison authorities would
25 understand that.

26 With that it's submitted, Your Honor.

27 THE COURT: I agree with you. It's unfortunate to see
28 a person who was honorably discharged, a paratrooper in the

1 Special Forces ending up with seventeen to life in the State
2 Prison. It's very unfortunate, Mr. Montes. I hope you are
3 successful in the future.

4 Very well. In this matter probation is denied.
5 You're sentenced to the State Prison for a period of seventeen
6 years to life. It's fifteen to life plus the enhancement,
7 12022.5, which is an additional two years. Seventeen to life
8 is the total.

9 Given credit for 468 days actually served plus
10 234 days good time and work time.

11 Motion on remaining counts?

12 MR. MAYER: To dismiss, Your Honor.

13 THE COURT: Granted.

14 (Proceedings were concluded.)
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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 2 FOR THE COUNTY OF LOS ANGELES
 3 DEPARTMENT NW R HON. DAVID A. HOROWITZ, JUDGE

4 THE PEOPLE OF THE STATE OF CALIFORNIA,

5 Plaintiff,

6
 7 VICTOR MANDEL MURTEZ,

8 Defendant.

NO. A-146105

REPORTER'S
 CERTIFICATE

10 STATE OF CALIFORNIA
 11 COUNTY OF LOS ANGELES

12 I, ALEXANDRIA WALSH, Official Reporter of the
 13 Superior Court of the State of California, for the County of
 14 Los Angeles, do hereby certify that the foregoing is a true
 15 and correct transcript of the proceedings held at the time of
 16 pronouncing sentence; that the views and recommendations of
 17 the court, if any, were contained therein pursuant to Section
 18 1203.01 of the Penal Code.

19 Dated this 6th day of July, 1987.

20
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 22
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 26
 27 /s/ Alexandria Walsh
 28 Official Reporter

CSR #4418

E X H I B I T 4

3

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

NVR

DATE: 21 4982
 JUDGE: DAVID HOROWITZ
 DEPT. ABRUCKLE/HESLEY
 CLERK: STADLER/NICODEN
 CASE NO. AL46105
 PEOPLE OF THE STATE OF CALIFORNIA
 01 MONTEZ VICTOR ANTONIO
 157 604
 DEPT. ABRUCKLE/HESLEY
 CLERK: STADLER/NICODEN
 209 01CTS
 (NATURE AND COURSE CHECKED IF PRESENT)
 COURT FOR PEOPLE
 DEPUTY DISTRICT ATTORNEY
 COURT FOR DEFENDANT
 DEPT. ABRUCKLE/HESLEY
 CLERK: STADLER/NICODEN
 209 01CTS
 (NATURE AND COURSE CHECKED IF PRESENT)
 COURT FOR PEOPLE
 DEPUTY DISTRICT ATTORNEY
 COURT FOR DEFENDANT
 DEPT. ABRUCKLE/HESLEY
 CLERK: STADLER/NICODEN
 209 01CTS

NATURE OF PROCEEDINGS: P & S
 15-15-20
 IS KNOWN AS THE ENGLISH
 CRIMINAL PROCEEDINGS: JOURNED/RESUMED
 DEFENDANT ORDERED DEL. TO DEPARTMENT OF CORRECTIONS PER SECTION 1203.03 PENAL CODE
 ON MOTION, PROBATION AND SENTENCE HEARING CONTINUED TO
 AT A.M. IN DEPT. SUPPLEMENTAL PROBATION REPORT/PROGRESS REPORT ORDERED
 DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR SENTENCING
 PROBATION DENIED. SENTENCE IS IMPOSED AS FOLLOWS:
 IMPRISONED IN STATE PRISON FOR TERM PRESCRIBED BY LAW TOTAL OF 17 YEARS TO LIFE
 COURT SELECTS THE TERM OF 15 YEARS FOR THE BASE TERM AS TO COUNTY 1
 PLUS 2 YEARS AS INDICATED IN BOX 67 BELOW
 COMMITTED TO CALIFORNIA YOUTH AUTHORITY. THEIR TERM OF IMPRISONMENT TO WHICH THE DEFENDANT WOULD
 HAVE BEEN SENTENCED PURSUANT TO SECTION 1170 PENAL CODE YEARS
 IMPRISONED IN LOS ANGELES COUNTY JAIL FOR TERM OF YEARS
 FINED IN SUM OF \$ PLUS ASSESSMENT TO BE PAID TO COUNTY CLERK
 SENTENCE IS SUSPENDED
 PROCEEDINGS SUSPENDED
 PROBATION GRANTED FOR A PERIOD OF YEARS (SEE CONDITIONS LISTED BELOW)
 PROBATION TO BE WITHOUT FORMAL SUPERVISION
 1. SPEND FIRST IN COUNTY JAIL ROAD CAMP OR HONOR FARM RECOMMENDED
 2. WORK FULFROUGH PROGRAM RECOMMENDED NOT TO BE ELIGIBLE FOR COUNTY PAROLE
 3. PAY FINE OF \$ PLUS SURCHARGE OF \$500 PURSUANT TO SECTION 1202.5 PENAL CODE PLUS ADDITIONAL
 FINE OF \$50000 PURSUANT TO SECTION 11723 HEALTH AND SAFETY CODE TOTAL FINE OF \$
 ASSESSMENT TO BE PAID TO COUNTY CLERK/PROBATION OFFICER IN SUCH AMOUNT AND MANNER AS HE SHALL PRESCRIBE
 4. MINIMUM PAYMENT OF FINE/RESTITUTION TO BE \$
 5. MAKE RESTITUTION THROUGH PROBATION OFFICER IN SUCH AMOUNT AND MANNER AS HE SHALL PRESCRIBE
 6. TOTAL AMOUNT OF RESTITUTION TO INCLUDE A 2% SERVICE CHARGE AS AUTHORIZED BY SECTION 272 WELFARE & INST. CODE
 7. NOT DRINK ANY ALCOHOLIC BEVERAGE AND STAY OUT OF PLACES WHERE THEY ARE THE CHIEF ITEM OF SALE
 8. NOT USE OR POSSESS ANY NARCOTICS, DANGEROUS OR RESTRICTED DRUGS OR ASSOCIATED PARAPHERNALIA EXCEPT
 WITH VALID PRESCRIPTION AND STAY AWAY FROM PLACES WHERE USERS CONGREGATE
 9. NOT ASSOCIATE WITH PERSONS KNOWN BY YOU TO BE NARCOTIC OR DRUG USERS OR SELLERS
 10. SUBMIT TO PERIODIC ANTI-NARCOTIC TESTS AS DIRECTED BY THE PROBATION OFFICER
 11. HAVE NO BLANK CHECKS IN POSSESSION NOT WRITE ANY PORTION OF ANY CHECKS NOT HAVE BANK ACCOUNT LESS
 WHICH YOU MAY DRAW CHECKS
 12. NOT GAMBLE OR ENGAGE IN BOOKMAKING ACTIVITIES OR HAVE PARAPHERNALIA THEREOF IN POSSESSION AND NOT
 BE PRESENT IN PLACES WHERE GAMBLING OR BOOKMAKING IS CONDUCTED
 13. NOT ASSOCIATE WITH
 14. COOPERATE WITH PROBATION OFFICER IN A PLAN FOR
 15. SUPPORT DEPENDENTS AS DIRECTED BY PROBATION OFFICER
 16. SEEK AND MAINTAIN TRAINING, SCHOOLING OR EMPLOYMENT AS APPROVED BY PROBATION OFFICER
 17. MAINTAIN RESIDENCE AS APPROVED BY PROBATION OFFICER
 18. SURRENDER DRIVER'S LICENSE TO CLERK OF COURT TO BE RETURNED TO DEPARTMENT OF MOTOR VEHICLES
 19. NOT DRIVE A MOTOR VEHICLE UNLESS LAWFULLY LICENSED AND INSURED
 20. NOT OWN, USE, OR POSSESS ANY DANGEROUS OR DEADLY WEAPONS
 21. SUBMIT HIS PERSON AND PROPERTY TO SEARCH OR SEIZURE AT ANY TIME OF THE DAY OR NIGHT BY ANY LAW ENFOR
 CEMENT OFFICER WITH OR WITHOUT A WARRANT
 22. OBEY ALL LAWS, ORDERS, RULES AND REGULATIONS OF THE PROBATION DEPARTMENT AND OF THE COURT
 23. DEFENDANT TO BE GIVEN CREDIT FOR 695 DAYS IN CUSTODY (SEE 324 DAYS GOOD TIME/WORK TIME)
 24. SENTENCE COUNTS TO RUN CONSECUTIVELY/CONCURRENTLY WITH
 25. STAY OF EXECUTION GRANTED TO
 26. ON MOTION OF PEOPLE COUNTS DISMISSED IN FURTHERANCE OF JUSTICE
 27. COURT ADVISES DEFENDANT OF HIS APPEAL/PAROLE RIGHTS
 28. FURTHER ORDER AS FOLLOWS: ADDITIONAL CONDITIONS OF PROBATION
 Additional 2 years ps for 12022.5 Penal Code
 allegation in Court 1 to our jurisdiction to
 continue on Court 2

29. SHERIFF IS ORDERED TO ALLOW DEFENDANT PHONE CALLS AT DEFENDANT'S OWN EXPENSE
 30. DEFENDANT FAILS TO APPEAR WITH/WITHOUT SUFFICIENT EXCUSE BAIL FORFEITED OR REVOKED
 31. BENCH WARRANT ORDERED ISSUED/AND HELD UNTIL NO BAIL BAIL FIXED AT \$
 32. DEFENDANT APPEARING BENCH WARRANT ORDERED RECALLED/QUASHED
 33. WARRANT/WARRANT ABSTRACT FILED WARRANT RECALL WRITTEN RECALL NO

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COURT COPY

302

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

PROBATION OFFICERS REPORT

REPORT SEQUENCE # 1

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff

VICTOR MONTEZ,

Defendant

DEPT. NW-R	ATTY. BURKOW	JUDGE HORNITZ
HEARING 4-23-92	C.I.I. NO. A0281745	COURT CASE NO. A-146105
DPO GRISHORE	AREA OF FICHE ESV	
ADDRESS (IF IN CUSTODY, EXPECTED ADDRESS WHEN RELEASED) (LAST) 131 NORTH BALSAM OXNARD, CA (NO TELEPHONE)		PHOB. NO. 7
APR 23 1992 BY M. McLENNEN, DEPUTY		

VICTOR MANUEL MARQUEZ-MONTEZ

CHARGED WITH THE CRIME(S) OF

CT. I: 187 PC (MURDER) WITH USE ALLEGATION PURSUANT TO PENAL CODE 12022(A) AND
PENAL CODE SECTION 12022.5; CT. II: 211 PC (ARMED ROBBERY) WITH USE ALLEGATION
PURSUANT TO PENAL CODE SECTION 12022(A) AND PENAL CODE SECTION 12022.5;

CONVICTED OF THE CRIME(S) OF

CT. I: 187 PC WITH USE ALLEGATION PURSUANT TO SECTION 12022.5
CT. III: 664/209 PC WITH ALLEGATIONS AND ALLEGATIONS OF CT. I
CONTINUED TO P.S. HEARING. CT. II: 211 PC DISMISSED AT **

AT PLEA, CT. THIS CASE	DATE IN JAIL
PLEA	619

☐ Pre-conviction invest. (131.3 C.C.P.)☐ Drug Diversion invest. (1000.1 (a) P.C.)

COMPANION CASES

DENISE MONTEZ

DISPOSITION

P.S. HEARING 4-23-82

PERSONAL HISTORY

AGE 28	BIRTHDATE 7-6-53	RACE MEX/AM	FORMAL EDUCATION 15 YEARS	AGE LEFT SCHOOL 16
MARITAL STATUS MARRIED	HOME INCLUDES WIFE, THREE CHILDREN			NO. OF DEPENDENTS FOUR
OCCUPATION (LAST) ROOFER	INCOME PER MONTH 0		WHERE EMPLOYED NOT	
HEALTH GOOD	CAME TO STATE 1956-1957	CAME TO COUNTY NOT	BRANCH MILITARY SERVICE U.S. ARMY	KIND OF DISCHARGE HONORABLE

CT. III: 664/209 PC (ATTEMPTED KIDNAPPING WITH INTENT TO COMMIT
ROBBERY) PURSUANT TO PENAL CODE SECTION 12022(A) AND PENAL CODE
SECTION 12022.5.

** APPELLATE COURT HEARING OF 11-25-80.

(AS SUPPLIED BY DEFENDANT AND CONFIRMED BY WIFE.)

DEFENDANT IS THE FOURTH OF NINE CHILDREN BORN TO

MANUEL ALVAREZ MONTEZ AND REYNOLDA MARQUEZ MONTEZ IN ELSA, TEXAS.

HE WAS RAISED BY HIS PARENTS IN OXNARD, CALIFORNIA. THE DEFENDANT

AND HIS FAMILY CAME TO CALIFORNIA WHEN HE WAS APPROXIMATELY THREE OR

1 FOUR YEARS OF AGE AND SETTLED IN SATICOY, CALIFORNIA. THEY
 2 SUBSEQUENTLY MOVED TO OXNARD, CALIFORNIA. THE DEFENDANT HAS NEVER
 3 LIVED IN LOS ANGELES COUNTY.

4 THE DEFENDANT, HIS WIFE, TWO CHILDREN AND A STEPSON,
 5 LAST RESIDED AT THE HOME OF THE DEFENDANT'S PARENTS IN OXNARD,
 6 CALIFORNIA FOR APPROXIMATELY TWO MONTHS. UPON RELEASE, THE DEFENDANT
 7 EXPECTS TO EITHER RETURN TO OXNARD OR LIVE IN SAN BERNADINO.

8 THE DEFENDANT'S PARENTS WERE DIVORCED IN 1973 OR 1974.
 9 THE FATHER IS A MECHANIC-WELDER AND HAS NOT REMARRIED. THE MOTHER'S
 10 OCCUPATION IS UNKNOWN. SHE REMARRIED IN 1980 TO A MR. COLON.

11 THE DEFENDANT ATTENDED CHANNEL ISLAND HIGH SCHOOL FOR
 12 APPROXIMATELY ONE YEAR AND DROPPED OUT AT THE AGE OF 16 YEARS WHEN HE
 13 ENROLLED IN THE JOB CORPS FOR APPROXIMATELY 11 MONTHS STUDYING HEAVY
 14 EQUIPMENT OPERATOR. HE LEFT THE JOB CORPS IN NOVEMBER OF 1969.
 15 WHILE IN THE NEW MEXICO STATE PENITENTIARY IN 1977 OR 1978, THE
 16 DEFENDANT OBTAINED HIS GENERAL EDUCATION DIPLOMA THROUGH THE DIVISION
 17 OF VOCATIONAL REHABILITATION. HE RECEIVED A CERTIFICATE FOR WELDING.
 18 HE APPEARS TO BE OF AVERAGE INTELLIGENCE.

19 THE DEFENDANT CO-HABITATED WITH LORENA R. MOLINA IN
 20 NEW MEXICO FROM APRIL OF 1975 UNTIL JUNE OF 1976 WHEN HE WAS COMMITTED
 21 TO THE NEW MEXICO STATE PENITENTIARY. HE RETURNED TO THE HOME OF
 22 MISS MOLINA IN APRIL OF 1978 AND REMAINED THERE UNTIL FEBRUARY OF 1979.
 23 THE DEFENDANT CO-HABITATED WITH DENISE GARCIA FROM MAY OF 1979 UNTIL

1 THEY MARRIED IN APRIL OF 1980. HE ASSUMED RESPONSIBILITY FOR HIS
2 WIFE'S SON, WHO WAS THEN ONE YEAR OF AGE. THERE WERE TWO DAUGHTERS
3 BORN OF THIS UNION; ONE ON FEBRUARY 9, 1980, AND THE SECOND IN
4 JANUARY OF 1981.

5 THE DEFENDANT'S 27-YEAR-OLD BROTHER, ANASTACIO,
6 HAD ONE LAW ENFORCEMENT CONTACT AS A JUVENILE FOR CURFEW AND MALICIOUS
7 MISCHIEF.

8 THE DEFENDANT WAS LAST EMPLOYED AS A ROOFER FOR
9 SOUTHERN CALIFORNIA ROOFING COMPANY IN DOWNEY FROM JUNE OF 1980 UNTIL
10 MID-JULY OF 1980. HE INDICATES THE JOB WAS THEN FINISHED AND HIS
11 SALARY WAS \$11.90 PER HOUR. THE DEFENDANT INDICATES THERE HAS BEEN
12 NO OTHER EMPLOYMENT. HE PLANS TO RETURN TO ROOFING OR WELDING UPON
13 HIS RELEASE.

14 THE DEFENDANT ENLISTED IN THE UNITED STATES ARMY ON
15 SEPTEMBER 8, 1970, ACHIEVED A RATING OF E-2, AND WAS HONORABLY
16 DISCHARGED ON SEPTEMBER 18, 1972. HE WAS A PARATROOPER IN THE
17 SPECIAL FORCES.

18 FINANCIAL INFORMATION:

19 THE DEFENDANT LAST PAID RENT OF \$75 PER MONTH. HE
20 OWNS A 1952 GMC, PICK UP VALUED AT \$700. HE INDICATES THE CITY
21 TOWED THE TRUCK AWAY AND ITS WHEREABOUTS ARE NOW UNKNOWN. HIS
22 FINANCIAL STATUS IS CURRENTLY POOR.
23

SUBSTANCE ABUSE:

THE DEFENDANT FIRST BEGAN SMOKING MARIJUANA AT THE AGE OF 13 YEARS UTILIZING IT TWO TO THREE TIMES PER WEEK. AT THE AGE OF 13, HE BEGAN SHOOTING HEROIN ON WEEKENDS AT A COST OF FIVE DOLLARS PER CAPSULE. THIS HABIT SUBSEQUENTLY PROGRESSED UNTIL HIS DAILY USE AMOUNTED TO \$200 PER DAY. AT THE AGE OF 15, HE BEGAN TAKING VALIUMS "WHENEVER THERE WAS NO STUFF". THE DEFENDANT TOOK QUAALUDES ONE TIME ONLY AT THE AGE OF 19 YEARS. HE SUPPORTED HIS HABIT THROUGH ODD JOBS AND BURGLARIES. THE DEFENDANT HAS NEVER OVERDOSED.

FROM MAY OF 1979 THROUGH MAY OF 1980, THE DEFENDANT WAS IN THE VICTORY OUT REACH PROGRAM LOCATED ON STAR ROUTE 27, HELENDALE, CALIFORNIA. THE MAIN OFFICE IS LOCATED AT 747 MOUNT VERNON AVENUE IN SAN BERNADINO.

GANG ACTIVITY:

THE DEFENDANT DENIES ANY GANG AFFILIATIONS.

PRIOR RECORD:SOURCES OF INFORMATION:

DEPARTMENT OF JUSTICE (2-24-82), CII (4-16-82),
DEFENDANT.

JUVENILE HISTORY:

AGE 9 OXNARD PD - MALICIOUS MISCHIEF, C&R N/A
AGE 13 OXNARD PD - MARKS ON ARM. N/A

-4-

(DEFENDANT SAYS MATTER DISMISSED AS HE STATED HE WAS GOING INTO THE JOB CORPS.)

ADULT HISTORY:

3-6-73 VENTURA SO - 459 PC (BURGLARY) - 4-26-73, DISMISSED
FURTHERANCE OF JUSTICE.

4-13-73 VENTURA SO - 11550 H&S (UNDER INFLUENCE CONTROLLED
SUBSTANCE) - 11364 H&S (POSSESSION CONTROLLED SUBSTANCE
PARAPHERNALIA) - 459 PC (BURGLARY). 1-7-74, CONVICTED
OF 11530 H&S (POSSESSION MARIJUANA) - CYA COMMITMENT.

4-17-73 VENTURA SO - 459 PC (BURGLARY) - DISMISSED.
4-26-73, PG, 602.5 PC (ENTERING NON-COMMERCIAL
DWELLING) - ONE YEAR SUMMARY PROBATION.

10-19-73 VENTURA SO - 11360 H&S (SELL OR TRANSPORT MARIJUANA/
HASH) FTA.

1-16-74 VENTURA SO - 242 PC (BATTERY) -

(DEFENDANT STATES THE INCIDENT HAPPENED WHILE IN COUNTY JAIL
AND MATTER WAS DISMISSED.)

DATE UNKNOWN NEW MEXICO - 459 PC (THEFT FROM MOTOR VEHICLE) -
COMMITTED TO NEW MEXICO STATE PENITENTIARY, RELEASED
4-22-78.

(DEFENDANT STATES HE TURNED HIMSELF IN AS HE WAS AWARE OF A
BENCH WARRANT HAVING BEEN ISSUED. HE SAYS HE WAS DISHONORABLY
DISCHARGED FROM THE CALIFORNIA YOUTH AUTHORITY JURISDICTION ON
JUNE 3, 1977 WHEN COMMITTED ON THIS CHARGE.)

PRESENT OFFENSE:

DEFENDANT WAS ARRESTED ON AUGUST 11, 1980 AT 12:00 NOON
BY THE LOS ANGELES POLICE DEPARTMENT WITH THE ASSISTANCE OF THE
OXNARD POLICE DEPARTMENT AT THE PLAZA MARINA HOTEL, LOCATED AT
711 WEST HUENEME, OXNARD AND BOOKED FOR 187 OF THE PENAL CODE (MURDER).
AT THE TIME OF THE ARREST, THERE WAS AN OUTSTANDING OXNARD WARRANT

-5-

1 NUMBER 013334AM01 WITH BAIL SET AT \$75. THERE WAS NO BAIL SET ON
2 THIS CURRENT ARREST. HE WAS CHARGED ON THE INFORMATION WITH COUNT
3 ONE, 187 PENAL CODE (MURDER) DURING THE COMMISSION OF A ROBBERY AND
4 KIDNAPPING PURSUANT TO PENAL CODE SECTION 190.2(A)(17); COUNT TWO,
5 211 PENAL CODE (ROBBERY); COUNTS THREE, 664/209 PENAL CODE (ATTEMPTED
6 KIDNAPPING TO COMMIT ROBBERY). ALL THREE COUNTS ALLEGED THE USE OF
7 A FIREARM PURSUANT TO SECTION 12022.5 OF THE PENAL CODE AND PURSUANT
8 TO SECTION 12022(A) OF THE PENAL CODE. IT WAS ALSO ALLEGED, IN ALL
9 THREE COUNTS, DEFENDANT INFLICTED GREAT BODILY INJURY AS DEFINED IN
10 SECTION 12022.7 OF THE PENAL CODE. COUNT TWO WAS DISMISSED ON
11 OCTOBER 1, 1980 AND UPHOLD BY THE APPELLATE COURT ON NOVEMBER 25, 1980.
12 ON MARCH 26, 1982, THE DEFENDANT PLED GUILTY TO COUNT ONE WITH THE
13 USE ALLEGATION PURSUANT TO PENAL CODE SECTION 12022.5. REMAINING
14 COUNTS AND ALLEGATIONS WERE CONTINUED TO THE PROBATION AND SENTENCING
15 HEARING.

16 **FACTS**: BASED ON THE ARREST REPORT, A WITNESS, MARK LABASTI,
17 INFORMED LOS ANGELES COUNTY SHERIFFS THAT HE HAD OBSERVED TWO MALE
18 SUSPECTS ON AUGUST 10, 1980 AT 1:48 A.M. DRAGGING A BODY TO THE
19 SHOULDER OF THE VENTURA FREEWAY WEST OF VALLEY CIRCLE OFF RAMP. AT
20 4:00 A.M. ON THE SAME DATE, DEPUTIES OBSERVED THE VICTIM WITH A
21 GUNSHOT WOUND TO HIS UPPER TORSO AND LYING IN A SUPINE POSITION ON
22 THE FREEWAY SHOULDER. DEATH WAS INDICATED AS OCCURRING AT 2:18 A.M.
23 THE VICTIM'S PANTS WERE OPEN AND PARTIALLY DOWN, THE ZIPPER WAS

1 PARTIALLY BROKEN AND THE TOP BUTTON WAS PULLED OFF. A BULLET HOLE
2 WAS OBSERVED BEHIND HIS RIGHT EAR AND A GUITAR PICK WAS STUCK TO
3 HIS LEFT CHEEK WITH BLOOD. MRS. IRMA CEBALLOS (22), 237 LARK STREET,
4 OXNARD, CALIFORNIA, INFORMED OFFICERS AT THE LOS ANGELES POLICE
5 DEPARTMENT, WEST VALLEY STATION, ON AUGUST 11, 1980 THAT AT
6 APPROXIMATELY 10:30 P.M. ON AUGUST 9, 1980, SHE AND TWO ASSOCIATES,
7 VICTOR MONTEZ, AND DENISE MONTEZ, HAD BEEN VISITING SAN BERNADINO
8 AND HAD STOPPED IN SAN FERNANDO VALLEY FOR A PIZZA ON THEIR RETURN
9 TRIP. WHEN THE THREE ATTEMPTED TO START THEIR BROWN STATION WAGON
10 AFTERWARDS, IT FAILED TO START AND THEY DECIDED TO HITCHHIKE ON THE
11 VENTURA FREEWAY. THEY FIRST APPROACHED AN UNKNOWN MALE APPROXIMATELY
12 ONE-HALF HOUR LATER. SUBSEQUENTLY, IT WAS AGREED THAT THE WITNESS
13 AND MRS. MONTEZ WOULD APPEAR AS TWO FEMALES STRANDED ON THE FREEWAY
14 WHILE MR. MONTEZ WOULD APPROACH ANY MOTORIST WHO STOPPED AND EXHIBIT
15 A FIREARM HE CARRIED IN HIS WAISTBAND. THE DEFENDANT HID IN A BUSH
16 AREA WHILE THE WOMEN HITCHHIKED. THE VICTIM APPROACHED IN A SILVER
17 DATSUN, STATION WAGON, LICENSE NUMBER 828YHP, CONVERSED WITH
18 MRS. MONTEZ, THEN ALLOWED THEM TO ENTER HIS VEHICLE. THE WITNESS
19 ENTERED THE FRONT SEAT AND MRS. MONTEZ ENTERED THE REAR SEAT WHILE
20 BECKONING TO THE DEFENDANT WHO WAS HIDING IN THE BUSHES. THE
21 DEFENDANT RAN TO THE VEHICLE BRANDISHING A SMALL CALIBER FIREARM
22 AND ENTERED THE REAR SEAT OF THE VEHICLE. HE THEN POINTED THE
23 WEAPON AT THE REAR PORTION OF THE VICTIM'S HEAD AND TOLD HIM TO TAKE

-7-

JCC0221 - PROB. 5A - P. 2 E2

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con +

1 THEM TO OXNARD OR HE WOULD KILL HIM. THE DEFENDANT FIRED ONE ROUND,
2 WITHOUT WARNING, STRIKING THE VICTIM APPROXIMATELY IN THE LOWER RIGHT
3 OF HIS HEAD. THE VICTIM FELL FORWARD, THE DEFENDANT EXITED THE
4 REAR PASSENGER DOOR AND OPENED UP THE FRONT PASSENGER DOOR. THE
5 DEFENDANT THEN DRUG THE VICTIM'S BODY ACROSS THE FRONT SEATS FROM
6 THE DRIVER'S SIDE AND SECRETED THE BODY BENEATH AN OVERHANGING TREE
7 AND SHRUB AREA. THE WITNESS THEN OBSERVED THE DEFENDANT GOING THROUGH
8 THE VICTIM'S GARMENTS BUT WAS UNSURE OF WHAT WAS REMOVED. THE
9 WITNESS AND MRS. MONTEZ HAD ALSO EXITED THE VEHICLE. THE DEFENDANT
10 THEN INSTRUCTED THE WITNESS TO RE-ENTER THE VEHICLE AND TOLD HIS
11 WIFE TO WEAR GLOVES SO AS NOT TO LEAVE HER FINGERPRINTS ON THE VEHICLE.
12 HE THEN ENTERED THE REAR SEAT AND INSTRUCTED HIS WIFE TO DRIVE THE
13 VEHICLE TO 456 CHANNEL ISLAND BOULEVARD IN OXNARD. UPON ARRIVAL AT
14 THE RESIDENCE WHICH IS OCCUPIED BY THERESA RAMIREZ, MRS. MONTEZ
15 REMOVED CLOTHING WHICH HAD BELONGED TO THE VICTIM AND ATTEMPTED TO
16 WASH THEM. THE WITNESS WAS UPSET AND THE DEFENDANT COMFORTED HER
17 INDICATING THEY COULD NOT BE IDENTIFIED AND THERE WAS NO WAY TO
18 TRACE THEIR LOCATION. WHEN THE WITNESS SUGGESTED THEY TURN THEMSELVES
19 IN, THE DEFENDANT THREATENED HER WITH ACTS OF VIOLENCE AND STATED SHE
20 WOULD BE KILLED IF SHE CONTACTED THE POLICE. THE WITNESS THEN
21 STATED THE WEAPON HAD BEEN SOLD TO AN UNKNOWN FEMALE IN THE OXNARD
22 AREA AND A GUITAR, WHICH HAD BEEN TAKEN FROM THE VICTIM'S VEHICLE,
23 WAS ALSO SOLD TO SOMEONE IN THE OXNARD AREA. THE WITNESS THEN

-8-

7608723 - PDR, SA - PS 202

Cont.

1 WILLINGLY ACCOMPANIED LOS ANGELES POLICE DEPARTMENT DETECTIVES TO THE
2 OXNARD POLICE STATION AND IDENTIFIED A PHOTO OF THE DEFENDANT. AT
3 APPROXIMATELY 12:10 P.M. ON AUGUST 11, 1980, THE WITNESS IDENTIFIED
4 THE VICTIM'S VEHICLE AT 149 ELIZA COURT IN THE CITY OF OXNARD.
5 THERESA RAMIREZ LATER INFORMED OFFICERS THAT MR. AND MRS. MONTEZ
6 HAD LEFT HER RESIDENCE AT APPROXIMATELY 4:00 P.M. ON AUGUST 10, 1980.
7 MRS. RAMIREZ INFORMED OFFICERS THAT SHE HAD ORDERED THE DEFENDANT
8 AND HIS WIFE OUT OF HER HOME AS THEY WERE ATTEMPTING TO SELL STOLEN
9 GOODS AND STATED THEY COULD BE LOCATED AT THE PLAZA MARINA HOTEL.
10 LOS ANGELES POLICE OFFICERS WENT TO THAT LOCATION ACCOMPANIED BY
11 OXNARD POLICE OFFICERS AND WERE INFORMED THE DEFENDANT AND HIS WIFE
12 WERE OCCUPYING APARTMENT NUMBER 25. THE DEFENDANT ANSWERED THE DOOR
13 TO APARTMENT 25 AND A REVOLVER WAS OBSERVED ON THE NIGHTSTAND. BOTH
14 THE DEFENDANT AND HIS WIFE WERE THEN ARRESTED.

END

15 DEFENDANT'S STATEMENT:

16 THE DEFENDANT HAS NOT SUBMITTED A WRITTEN STATEMENT.
17 ORALLY, HE STATES THAT HE, HIS WIFE, AND IRMA CEDALLOS WERE LOOKING
18 FOR A RIDE IN THE SAN FERNANDO VALLEY WHERE HE HAD DRIVEN HIS CAR
19 AND IT HAD BROKEN DOWN. THEY WERE EN ROUTE TO OXNARD FROM
20 SAN BERNADINO. HE SAW A GUY PARKED AT A GAS STATION AND OFFERED
21 HIM \$20 FOR A RIDE, BUT THE PERSON HAD NO GAS. THEY THEN WALKED ON
22 TO THE 101 FREEWAY AND THE WOMEN WERE TOLD TO ATTEMPT TO GET A RIDE
23 WHILE THE DEFENDANT HID. HE STATED HE WOULD CATCH THEM LATER. A

1 CAR STOPPED AND OFFERED THEM A RIDE. THE DEFENDANT THEN CHANGED HIS
2 MIND, RAN TO THE CAR, AND PUSHED HIS WIFE OUT OF THE WAY KNOCKING
3 HER DOWN. THE VICTIM WAS SCARED AND THE DEFENDANT TOLD HIM THAT
4 "NOTHING WOULD HAPPEN TO HIM. JUST GIVE ME A RIDE." THE VICTIM
5 AGREED AND THE DEFENDANT LET HIM GO. HE STATES HE HAD A GUN IN HIS
6 HAND AND, WHEN THE VICTIM ADJUSTED HIMSELF IN HIS SEAT, HE ACCIDENTLY
7 HIT THE GUN WHICH WENT OFF AND KILLED HIM. THE DEFENDANT TOOK THE
8 VICTIM OUT OF THE CAR, PUT HIS BODY IN THE BUSHES, RE-ENTERED THE
9 VEHICLE AND DROVE TO OXNARD. HE DENIES HAVING GONE THROUGH THE
10 VICTIM'S POCKETS AS HE STATES HE HAD NO INTENTION OF ROBBING OR
11 HURTING ANYONE.

12 INTERESTED PARTIES:

13 CYNTHIA STEWART, VICTIM'S SISTER, INDICATES THE
14 VICTIM WAS SIX FEET TWO INCHES, APPROXIMATELY 170 POUNDS, AGE 33
15 YEARS, SINGLE WITH NO DEPENDENTS. SHE STATES THAT IN 1976 HE HAD
16 AN ATTACK IN HIS LEFT EYE OF HISTOPLASMOIS WHICH IS AN EYE DISEASE
17 AND CAUSES BLINDNESS. SHE INDICATED THE ILLNESS CLOGS ONE'S VISION
18 AND THAT THE DOCTOR HAD STATED THIS WAS THE WORST CASE EVER SEEN.
19 SHE STATES HER BROTHER WAS RETURNING TO ALTADENA FROM BAND PRACTISE
20 IN WOODLAND HILLS. THE CAR WAS SUBSEQUENTLY RETURNED, BUT WAS TOTALLY
21 STRIPPED. MISS STEWARD RECEIVED A CALL FROM THE OXNARD POLICE
22 DEPARTMENT INDICATING HER BROTHER'S CAR HAD BEEN FOUND; HOWEVER, SHE
23 DID NOT KNOW AT THE TIME THAT THE HOMICIDE VICTIM WAS ACTUALLY HER

1 BROTHER. SHE STATES THERE WAS INSURANCE WHICH COVERED HER BROTHER'S
2 FUNERAL EXPENSES. ALSO, MISS STEWART WAS INFORMED BY THE POLICE
3 DEPARTMENT OF HER ELIGIBILITY FOR VICTIM'S COMPENSATION.

4 EVALUATION:

5 THE DEFENDANT, WHO INDICATES HIS ONLY EMPLOYMENT WAS
6 FOR A PERIOD OF ONE AND ONE-HALF MONTHS SINCE HIS RELEASE FROM THE
7 NEW MEXICO STATE PENITENTIARY IN 1978, HAS HAD THE ADVANTAGE OF
8 BEING THE PRODUCT OF AN INTACT FAMILY ENVIRONMENT UNTIL THE AGE OF
9 20 OR 21 YEARS. HOWEVER, HE WAS COMMITTED TO THE CALIFORNIA YOUTH
10 AUTHORITY SOON AFTER HIS 21ST BIRTHDAY FOR POSSESSION. HIS ONLY
11 OTHER CONTACT WITH LAW ENFORCEMENT HAS BEEN OF A MODERATE NATURE.
12 HE COMES FROM A LARGE FAMILY AND NO OTHER MEMBERS ARE INDICATED AS
13 HAVING BEEN ARRESTED. THE DEFENDANT HAS OBTAINED THE EQUIVALENT OF
14 A HIGH SCHOOL DIPLOMA AND HAS HAD TRAINING AS A HEAVY EQUIPMENT
15 OPERATOR AND TRAINING IN WELDING, YET NO ATTEMPTS WERE MADE TO
OBTAIN CONTINUAL EMPLOYMENT. THE DEFENDANT HAS BEEN HEAVILY INVOLVED
17 IN THE USE OF NARCOTICS AND HAS BEEN ADDICTED TO SAME FOR THE
18 MAJORITY OF HIS LIFETIME. HE INDICATES REMORSE OVER THIS CURRENT
19 MATTER AND DENIES ANY INTENT OF HARM TO ANYONE. THE VICTIM WAS A
20 YOUNG MAN WITH NO DEPENDENTS; HOWEVER, IT APPEARS HE MAY HAVE HAD A
21 VISION PROBLEM AND POSSIBLY NOT OBSERVED THE DEFENDANT APPROACHING
HIS VEHICLE.

THIS WAS A CRIME OF A VIOLENT NATURE AND THE DEFENDANT'S

1 STATEMENT OF FEELING REMORSE IS IN DIRECT CONTRADICTION TO STATEMENTS
2 OBTAINED FROM THE ONLY EYEWITNESSES TO THE INCIDENT.

3 SENTENCING CONSIDERATIONS:

4 DUE TO THE CHARGE OF MURDER WITHIN THE USE ALLEGATION
5 HAVING BEEN FOUND TRUE, THE DEFENDANT IS INELIGIBLE FOR PROBATION.
6 PURSUANT TO SECTION 1203.06 OF THE PENAL CODE AND 1203.075 OF THE
7 PENAL CODE.

8 CIRCUMSTANCES IN AGGRAVATION:

- 9 1. PRE-PLANNED USE OF A FIREARM.
10 2. A VIOLENT CRIME WHICH CAUSED THE DEATH TO THE
11 VICTIM.
12 3. DEFENDANT THREATENED THE VICTIM WITH A FIREARM.
13 4. DEFENDANT ATTEMPTED TO CONCEAL THE VICTIM FROM
14 SIGHT.
15 5. THE DEFENDANT TAMPERED WITH EVIDENCE USEFUL IN
16 THE INVESTIGATION OF THIS CRIME.

17 CIRCUMSTANCES IN MITIGATION:

- 18 1. DEFENDANT'S VEHICLE WAS INOPERATIVE.
19 2. THE DEFENDANT IS A HEROIN ADDICT.

20 CIRCUMSTANCES IN MITIGATION AND IN AGGRAVATION SUPPORT
21 A MOTION FOR THE HIGHER BASED TERM.

22 RECOMMENDATION:

23 IT IS RECOMMENDED THAT PROBATION BE DENIED AND THAT

-12-

1 DEFENDANT BE SENTENCED TO STATE PRISON WITH PRE-IMPRISONMENT OF
2 619 DAYS.

3 RESPECTFULLY SUBMITTED,

4 KENNETH E. KIRKPATRICK
5 PROBATION OFFICER

6 BY

Lynette Grisamore
7 LYNETTE GRISAMORE, DEPUTY
8 EAST SAN FERNANDO VALLEY AREA OFFICE
9 901-3979

10 READ AND APPROVED:

11 *Art Keener*
12 ART KEENER, SDPO

13 (SUBMITTED 4-16-82)
14 (TYPED 4-20-82)
15 LG:BS (6)

16 -13-

I HAVE READ AND CONSIDERED
THE FOREGOING REPORT OF THE
PROBATION OFFICER.

Clarence Brown
JUDGE OF THE SUPERIOR COURT
17-14

SUBSEQUENT PAROLE CONSIDERATION HEARING
STATE OF CALIFORNIA
BOARD OF PAROLE HEARINGS

In the matter of the Life)
Term Parole Consideration)
Hearing of:)

CDC Number C-48215

VICTOR MONTEZ)
_____)

**INMATE
COPY**

CORRECTIONAL TRAINING FACILITY
SOLEDAD, CALIFORNIA

MAY 31, 2006

10:57 A.M.

PANEL PRESENT:

JACK GARNER, Presiding Commissioner
DENNIS SMITH, Deputy Commissioner

OTHERS PRESENT:

VICTOR MONTEZ, Inmate
KATERA E. RUTLEDGE, Attorney for Inmate
HERBERT LAPIN, Deputy District Attorney
TWO CORRECTIONAL OFFICERS, Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____	No	See Review of Hearing
_____	Yes	Transcript Memorandum

Ramona Cota

Peters Shorthand Reporting

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--oOo--

1 P R O C E E D I N G S

2 DEPUTY COMMISSIONER SMITH: We are on the
3 record.

4 PRESIDING COMMISSIONER GARNER: All
5 right, this is a Subsequent Parole Consideration
6 Hearing for Victor Montez, M-O-N-T-E-Z, CDC
7 number C-48215. The date today is May 31, 2006.
8 It is now 10:57 a.m. and we are located at the
9 Correctional Training Facility in Soledad. The
10 inmate was received on June 1, 1982 from Los
11 Angeles County. The offense is murder in the
12 second degree with the use of a firearm, the
13 case number is A Adam, 146105. Count number one
14 is PC 187 with 12022.5. The term was 15 years
15 to life plus 2 and the minimum eligible parole
16 date was April 9, 1990. This hearing is going
17 to be tape-recorded and for purposes of voice
18 identification for the transcriber each of us at
19 the table is going to be required to state our
20 first name, last name, spelling the last name.
21 When we get to you, Mr. Montez, if you'd also
22 give us your CDC number, please.

23 INMATE MONTEZ: Yes sir.

24 PRESIDING COMMISSIONER GARNER: I'll
25 start and go to my left. I'm Jack Garner, G-A-
26 R-N-E-R, Commissioner.

27 DEPUTY COMMISSIONER SMITH: My name is

1 Dennis Smith, S-M-I-T-H, I'm a Deputy
2 Commissioner.

3 **DEPUTY DISTRICT ATTORNEY LAPIN:** Herbert
4 Lapin, L-A-P-I-N, Deputy District Attorney Los
5 Angeles County.

6 **ATTORNEY RUTLEDGE:** Katera E. Rutledge,
7 R-U-T-L-E-D-G-E, attorney for Mr. Montez.

8 **INMATE MONTEZ:** Victor M. Montez, M-O-N-
9 T-E-Z, C number is C-48215.

10 **PRESIDING COMMISSIONER GARNER:** Okay,
11 thank you. And for the record, we do have two
12 correctional peace officers in the room for
13 purposes of security. Okay, Ms. Rutledge and
14 Mr. Montez, I have a BTB (sic) 1073. This is
15 the reasonable accommodation associated with the
16 Americans with Disabilities Act. And the form
17 was signed over a year ago now, it was May 10,
18 2005, and at that time you indicated you didn't
19 need any help for your parole hearing. No
20 disabilities were identified from the file and
21 the fact that you had a GED was noted. Let me
22 go ahead and ask you, has anything occurred
23 since May 10 of 2005 that we need to provide an
24 accommodation for today?

25 **INMATE MONTEZ:** As far as ADA? No.

26 **PRESIDING COMMISSIONER GARNER:** Your
27 ability to see, hear, mobility, anything like

1 that.

2 INMATE MONTEZ: No, I'm all right.

3 PRESIDING COMMISSIONER GARNER: You're
4 okay. Are you on any medications?

5 INMATE MONTEZ: No.

6 PRESIDING COMMISSIONER GARNER: No
7 medications. So you're set to go?

8 INMATE MONTEZ: Ready to go, sir.

9 PRESIDING COMMISSIONER GARNER:
10 Ms. Rutledge?

11 ATTORNEY RUTLEDGE: Yes.

12 PRESIDING COMMISSIONER GARNER: All
13 right, thank you. This hearing is being
14 conducted pursuant to Penal Code Section 3041
15 and 3042 and the rules and regulations of the
16 Board of Parole Hearings governing parole
17 consideration hearings for life inmates. The
18 purpose of today's hearing is to consider your
19 suitability for parole. In doing so we will
20 consider the number and nature of the crimes you
21 were committed for, your prior criminal and
22 social history and your behavior and programming
23 since your commitment. We have had the
24 opportunity to review your Central File and your
25 prior hearing transcript. You will be given the
26 opportunity to correct or clarify the record.
27 We will consider your progress since your

1 commitment and since your last hearing. Your
2 updated counselor's report and psychological
3 report will also be considered. And any change
4 in your parole plans should be brought to our
5 attention. We will reach a decision today and
6 inform you whether or not we find you suitable
7 for parole and the reasons for our decision. If
8 you are found suitable for parole the length of
9 your confinement will be explained to you. This
10 hearing will be conducted in two phases. I will
11 discuss with you the crime you were committed
12 for, your prior criminal and social history,
13 your parole plans and any letters of support or
14 opposition that may be in the file.
15 Commissioner Smith will discuss with you your
16 progress since your commitment, your counselor's
17 report and your psychological evaluation. Once
18 that is concluded the Commissioners, the
19 district attorney and your attorney will be
20 given an opportunity to ask you questions. The
21 questions from the district attorney will be
22 asked through the Chair and you should direct
23 your answers back to the panel. Before we
24 recess for deliberations the district attorney,
25 your attorney and you will be given an
26 opportunity to make a final statement regarding
27 your parole suitability. Your statement should

1 be directed to why you feel you are suitable for
2 parole. We will then recess, clear the room and
3 deliberate. Once we have completed our
4 deliberations we will resume the hearing and
5 announce our decision. The California Code of
6 Regulations states regardless of time served a
7 life inmate shall be found unsuitable for and
8 denied parole if in the judgment of the panel
9 the inmate would pose an unreasonable risk of
10 danger to society if released from prison. Now
11 Mr. Montez, you have certain rights. The rights
12 included a timely notice to this hearing, the
13 right to review your Central File and the right
14 to present relevant documents. And I'd ask you
15 at this time, have those rights been met?

16 INMATE MONTEZ: Yes.

17 PRESIDING COMMISSIONER GARNER: All
18 right.

19 ATTORNEY RUTLEDGE: Yes.

20 PRESIDING COMMISSIONER GARNER: You also
21 have a right to be heard by an impartial panel.
22 Today the panel will be myself and Commissioner
23 Smith. Any objection to the panel?

24 INMATE MONTEZ: No sir.

25 ATTORNEY RUTLEDGE: No.

26 PRESIDING COMMISSIONER GARNER: Thank
27 you. You will receive a copy of our written

1 tentative decision today. The decision is
2 subject to review by the Decision Review Unit
3 and by the entire Board meeting as a body. It
4 will become effective in 120 days and a copy of
5 the tentative decision and a copy of the
6 transcript will be sent to you. You might
7 recall from previous Boards, in May 2004 the
8 appeal procedure changed and now you are
9 required to go through the courts if you want to
10 appeal a panel decision.

11 **INMATE MONTEZ:** Yes sir.

12 **PRESIDING COMMISSIONER GARNER:** All
13 right. And you are not required to admit your
14 offense or discuss your offense if you do not
15 wish to do so. However, this panel does accept
16 as true the findings of the court and you are
17 invited to discuss the facts and circumstances
18 of the offense if you desire. The Board will
19 review and consider any prior statements you
20 have made regarding the offense in determining
21 your suitability for parole. At this time I
22 will ask Commissioner Smith if there is any
23 confidential material in your C File and if
24 we'll be using it today?

25 **DEPUTY COMMISSIONER SMITH:** There is
26 confidential information but it will not be used
27 this morning.

1 **PRESIDING COMMISSIONER GARNER:** All
2 right, thank you. Counselors, I have the
3 hearing checklist back, thank you. And do we
4 have any additional documents to submit today?

5 **ATTORNEY RUTLEDGE:** Yes, we'll submit
6 them when we get to the parole plans.

7 **PRESIDING COMMISSIONER GARNER:** All
8 right. Any preliminary objections?

9 **ATTORNEY RUTLEDGE:** No. We only have --
10 We just want to note for the record that
11 Mr. Montez's hearing is eight months late.

12 **PRESIDING COMMISSIONER GARNER:** Okay.
13 We'll note that and just tell you we're making
14 progress. A year ago it might have been a year
15 or more so we're getting down there. The
16 backlog is getting chipped away at. And if we
17 keep a full house of Commissioners we'll get to
18 you a little more quickly.

19 **INMATE MONTEZ:** Yes.

20 **DEPUTY COMMISSIONER SMITH:** Counsel, if
21 Mr. Montez does have letters regarding any
22 parole plans, if I could see those now to review
23 those so that Commissioner Garner will be able
24 to address those as soon as we get to that
25 point. I would appreciate that, thank you.

26 **PRESIDING COMMISSIONER GARNER:** Okay, and
27 will Mr. Montez be speaking with us today?

1 **ATTORNEY RUTLEDGE:** He'll speak on all
2 issues except the commitment offense.

3 **PRESIDING COMMISSIONER GARNER:** Okay, get
4 you to raise your right hand, sir. Do you
5 solemnly swear or affirm that the testimony you
6 give at this hearing will be the truth, the
7 whole truth and nothing but the truth?

8 **INMATE MONTEZ:** Yes I do.

9 **PRESIDING COMMISSIONER GARNER:** All
10 right, thank you. Okay. Insomuch as Mr. Montez
11 has elected not to speak about the commitment
12 offense I'll go ahead and put into the record a
13 summary of the commitment offense. And I am
14 taking this from the June 2002 Board Report that
15 was prepared by Correctional Counselor I initial
16 M. Rubio, R-U-B-I-O.

17 "In that on August 9, 1980 Montez
18 and two women, one of whom was
19 his wife, were on their way to
20 Oxnard when their vehicle became
21 disabled. The two women began
22 to hitchhike on the Ventura
23 Freeway while Montez hid in the
24 bushes. It was agreed that the
25 two women would appear as two
26 females stranded on the freeway
27 while Montez would approach the

1 motorist who stopped and exhibit
2 a firearm he carried in his
3 waistband. The victim, Michael
4 Stewart (phonetic) stopped for
5 the women. The women entered
6 the car and Ms. Montez entered
7 the rear seat while beckoning to
8 Montez who was still hiding in
9 the bushes. He ran to the car
10 and brandished a small caliber
11 firearm and entered the rear
12 seat of the car. He pointed the
13 firearm at the back of the
14 victim's head and told him to
15 drive them to Oxnard or he would
16 kill him. Montez then fired,
17 striking and killing the victim.
18 Montez exited the car, dragged
19 the body from the car and
20 secreted the body beneath an
21 overhanging tree and shrubs.
22 After leaving the body Montez,
23 his wife and the other female
24 companion drove the victim's car
25 to Oxnard. Montez was arrested
26 on August 11, 1980."

27 From the same report the version that was placed

1 into the report by the correctional counselor
2 for the prisoner's version indicates that Montez
3 basically concurs with the report.

4 "He states he never threatened the
5 victim, in fact he offered the
6 victim money for gas. He had the
7 gun pointed at the time at the
8 victim's head. Montez believes
9 the gun fired when the victim
10 adjusted himself in the car seat
11 and his elbow knocked the gun.
12 Montez states it was not his
13 intention to kill the victim.
14 Montez explained he was in
15 possession of the gun, that it was
16 stolen, as he was attempting to
17 sell it to purchase drugs. He
18 claimed he was not intoxicated or
19 under the influence of drugs at
20 the time of the offense. He
21 claims he never threatened the
22 witness with violence if she
23 contacted the police as is
24 alleged. His wife was
25 subsequently convicted of
26 accessory to murder and committed
27 to CDC for a period of three

1 years, at which time she paroled.
2 He has had no subsequent contact
3 with her. He claims the purpose
4 of stopping the vehicle on the
5 freeway was simply to get a ride
6 back to Oxnard.

7 **DEPUTY COMMISSIONER SMITH:** Commissioner,
8 if I may. The two letters that were provided
9 are both from the same individual, they are both
10 employment letters. The most recent one is
11 March, is dated March 1, 2006. That's in the
12 Board packet so you will be addressing that when
13 we get to that point. So I am going to return
14 these two letters to counsel.

15 **PRESIDING COMMISSIONER GARNER:** Okay.
16 Okay, thank you. All right, so far as a prior
17 record. Reading from the same report it
18 indicates that the first arrest was at the age
19 of nine, arrested for malicious mischief,
20 counseled and released. At the age of 13
21 released for needle marks on his arm. According
22 to Montez this matter was dismissed as you were
23 going to go into the Job Corps. Both those
24 correct, sir?

25 **INMATE MONTEZ:** Yes sir.

26 **PRESIDING COMMISSIONER GARNER:** All
27 right, thank you. The first adult arrest

1 occurred at the age of 19, arrested for
2 burglary, the case was dismissed. One month
3 later arrested for under the influence of a
4 controlled substance and possession of substance
5 paraphernalia and burglary. And then on January
6 7, 1974, convicted of possession of marijuana
7 and sent to CYA. Arrest history is inclusive of
8 burglary April 17 of '73 which was dismissed,
9 entering a non-commercial dwelling. April 26,
10 '73 for which you sustained one year probation.
11 Selling and transporting marijuana October '73.
12 FTA and a battery on January 16, '74, which was
13 dismissed. Theft of a vehicle in February of
14 1976. And the indication was that that one was
15 in the state of New Mexico and you were
16 sentenced to the New Mexico State Penitentiary,
17 being paroled April 22, 1978. Is that the
18 correct period of time?

19 INMATE MONTEZ: Yes.

20 PRESIDING COMMISSIONER GARNER: Okay.

21 INMATE MONTEZ: I believe it is.

22 PRESIDING COMMISSIONER GARNER: All
23 right. And so far as the commitment offense,
24 again we have that. That was August 11 in 1980.
25 So far as your personal life. You were the
26 fourth of eleven children born to your parents
27 whose marriage remained intact until you were 20

1 years of age. Your parents, did they separate
2 or divorce?

3 INMATE MONTEZ: My father has since
4 deceased but my mother is still alive.

5 PRESIDING COMMISSIONER GARNER: Your
6 mother is still alive. So when you were 20
7 years of age, that's when your mother and father
8 split up?

9 INMATE MONTEZ: Yes.

10 PRESIDING COMMISSIONER GARNER: And then
11 he subsequently passed away?

12 INMATE MONTEZ: That was about the time,
13 yes.

14 PRESIDING COMMISSIONER GARNER: All
15 right. And your mother remarried in 1980. Is
16 that correct?

17 INMATE MONTEZ: I believe so, yes.

18 PRESIDING COMMISSIONER GARNER: Okay.

19 DEPUTY COMMISSIONER SMITH: Mr. Montez,
20 if I could ask you to move to the microphone
21 just a little bit closer to you. That way you
22 don't have to lean forward and I can make sure I
23 can get your voice on the tape.

24 INMATE MONTEZ: Okay.

25 DEPUTY COMMISSIONER SMITH: Thank you.

26 INMATE MONTEZ: Sorry.

27 PRESIDING COMMISSIONER GARNER: All

1 right, all right. You were born in Texas and
2 the family relocated to California when you were
3 three or four years old. Your father was
4 employed as a mechanic and a welder and you have
5 a brother that was committed to CDC for murder.
6 You had another brother who has had contact with
7 law enforcement but never received a commitment
8 to CDC. Began smoking marijuana two to three
9 times a week at the age of 13 and at the age of
10 13 began using heroin on weekends. And it
11 progressed to the point where you were
12 supporting a \$200 a day habit, correct?

13 INMATE MONTEZ: Yes sir.

14 PRESIDING COMMISSIONER GARNER: And about
15 what age was that?

16 INMATE MONTEZ: The heroin?

17 PRESIDING COMMISSIONER GARNER: The
18 heroin, yeah.

19 INMATE MONTEZ: I believe I was 13 or 14.

20 PRESIDING COMMISSIONER GARNER: That's a,
21 that's a pretty healthy budget for dope.

22 INMATE MONTEZ: Well that came --

23 PRESIDING COMMISSIONER GARNER: That came
24 later?

25 INMATE MONTEZ: Years later.

26 PRESIDING COMMISSIONER GARNER: All
27 right. And at the age of 15 you began taking

1 Valium when you couldn't get the heroin and you
2 supported your habit via odd jobs and
3 burglaries. And you dropped out of high school
4 at 16. Was that associated with some of the
5 criminal difficulties?

6 INMATE MONTEZ: I just -- it might have
7 been.

8 PRESIDING COMMISSIONER GARNER: Prior to
9 dropping out of school how did you do in school?

10 INMATE MONTEZ: Average student, I guess.

11 PRESIDING COMMISSIONER GARNER: All
12 right. And you stayed in the job corps for
13 about 11 months studying as a heavy equipment
14 operator. It looks like you went into the Army
15 in 1970, got honorably discharged in '72,
16 serving as a paratrooper in the Special Forces.
17 Correct?

18 INMATE MONTEZ: Yes.

19 PRESIDING COMMISSIONER GARNER: Where did
20 you serve?

21 INMATE MONTEZ: I served in the 82nd.

22 PRESIDING COMMISSIONER GARNER: Okay.

23 INMATE MONTEZ: Stateside.

24 PRESIDING COMMISSIONER GARNER: All
25 stateside?

26 INMATE MONTEZ: Yes sir.

27 PRESIDING COMMISSIONER GARNER: Okay.

1 Did you get clean while you were in the
2 military?

3 INMATE MONTEZ: I did, I did, I did all
4 right in the military. I should have stayed in.

5 PRESIDING COMMISSIONER GARNER: Okay.
6 And you got your GED while you were at the
7 penitentiary in New Mexico.

8 INMATE MONTEZ: Yes sir.

9 PRESIDING COMMISSIONER GARNER: And that
10 you have got certificates for welding. And that
11 you lived in a common law relationship for about
12 a year in New Mexico and you remained in that
13 relationship until February of '79. You then
14 lived with a Denise Garcia from May of '79 until
15 you got married in April of '80. And you
16 assumed the responsibility for your wife's son
17 and then you had two daughters together. They
18 are now being cared for and raised by
19 grandparents.

20 INMATE MONTEZ: Yes.

21 PRESIDING COMMISSIONER GARNER: How old
22 are they now?

23 INMATE MONTEZ: One is 26 and the other
24 one is 25.

25 PRESIDING COMMISSIONER GARNER: Okay.
26 How are they doing?

27 INMATE MONTEZ: They're doing real good.

1 **PRESIDING COMMISSIONER GARNER:** Both
2 doing good? Married?

3 **INMATE MONTEZ:** Yes. The youngest one
4 just recently got married in November.

5 **PRESIDING COMMISSIONER GARNER:** And the
6 oldest one, does she have grandchildren for you?

7 **INMATE MONTEZ:** Yeah, both of them got
8 grandchildren for me.

9 **PRESIDING COMMISSIONER GARNER:** Okay.
10 And it speaks to your crime partner, your wife
11 and the time she served and that you remain in
12 contact with her and divorced in '83. At the
13 time of the offense your wife and the children
14 resided in your parents' home in Oxnard.

15 **INMATE MONTEZ:** Yes.

16 **PRESIDING COMMISSIONER GARNER:** Okay.
17 While you were growing up, up until let's say
18 the time you were about 16 or 17, were you ever
19 hospitalized for any reason?

20 **INMATE MONTEZ:** No.

21 **PRESIDING COMMISSIONER GARNER:** Never
22 been hospitalized, okay.

23 **INMATE MONTEZ:** I had my tonsils out when
24 I was a kid but that was way before that.

25 **PRESIDING COMMISSIONER GARNER:** Okay.
26 That's kind of a routine thing. While you were
27 living with your wife at your folks' home in

1 Oxnard were you working?

2 INMATE MONTEZ: I was working as a
3 roofer.

4 PRESIDING COMMISSIONER GARNER: Working
5 as a roofer.

6 INMATE MONTEZ: Some company out of
7 Industrial City.

8 PRESIDING COMMISSIONER GARNER: All
9 right. Full time or just by the job?

10 INMATE MONTEZ: It was just a job site.

11 PRESIDING COMMISSIONER GARNER: Okay.
12 Were you paid under the table or did you get a
13 real check?

14 INMATE MONTEZ: Well I got a check but I
15 signed it over to the guy that hired me so I
16 don't know if it was under the table or what?

17 PRESIDING COMMISSIONER GARNER: Then he
18 gave you cash?

19 INMATE MONTEZ: And then he gave me cash.

20 PRESIDING COMMISSIONER GARNER: Okay.
21 How was your, how was your family life growing
22 up?

23 INMATE MONTEZ: It was good. I believed
24 it was good.

25 PRESIDING COMMISSIONER GARNER: Any
26 issues of abuse in the household?

27 INMATE MONTEZ: None.

1 PRESIDING COMMISSIONER GARNER: With you
2 or your brothers and sisters? Your mother, was
3 she ever abused?

4 INMATE MONTEZ: You mean beatings or
5 stuff like that?

6 PRESIDING COMMISSIONER GARNER: I'm going
7 to distinguish between a whipping and a
8 righteous beating.

9 INMATE MONTEZ: No, no, no. I mean, you
10 know, we got our, we got our whippings when we
11 had them coming.

12 PRESIDING COMMISSIONER GARNER: Okay. So
13 far as your parole plans, and this is going back
14 and it may change based on some of the letters.
15 But at the time this report was written you were
16 going to be released to your mother's home in
17 Oxnard. Is that the same home you were living
18 in at the time you got arrested --

19 INMATE MONTEZ: Yes.

20 PRESIDING COMMISSIONER GARNER: -- or has
21 she moved? Does she own the home or renting it?

22 INMATE MONTEZ: It's her home, yes.

23 PRESIDING COMMISSIONER GARNER: Okay.

24 INMATE MONTEZ: But as far -- May I say
25 something? As far as that, there were certain
26 programs that I had written to and the latest
27 was this one right here that I haven't given to

1 -- it was a drug program.

2 **PRESIDING COMMISSIONER GARNER:** Well this
3 is old enough, let me go right to, right to the
4 letters, which will give me a more current
5 assessment as to what you plan to do. All
6 right. The first one is March 1, 2006. It's
7 typed and signed and it's signed by a Sal, S-A-
8 L, Flores and Flores is with an S on the end.
9 And there is also a business card attached to it
10 for the firm of Ideal Upholstery with an address
11 in Ventura, California. And the person that
12 wrote the letter, his name is on the business
13 card. Remind the Board that my offer for
14 employment for him is still available and the
15 place of business again is noted in Ventura,
16 California. And that upon his release he is to
17 contact me, establish a work schedule. An
18 hourly salary of \$9, advancement based on
19 performance. And it provides a telephone number
20 if we want to contact Mr. Flores. The second
21 letter is --

22 **DEPUTY COMMISSIONER SMITH:** Commissioner,
23 if I may. The letter on the second -- the date
24 of the second letter is 5/30/2002.

25 **PRESIDING COMMISSIONER GARNER:** Um-hmm.

26 **INMATE MONTEZ:** Yes.

27 **DEPUTY COMMISSIONER SMITH:** Was that

1 letter addressed at your last hearing in June
2 2002?

3 INMATE MONTEZ: No. I think it might
4 have been, I'm not sure. I presented one of the
5 letters.

6 DEPUTY COMMISSIONER SMITH: Do you have a
7 more current letter from them?

8 INMATE MONTEZ: I think it was the one
9 you just, the one for 2006.

10 ATTORNEY RUTLEDGE: Let me just clarify.
11 The letters that we've given you were the
12 updated job letter. Now he doesn't have -- if
13 you're talking about the Freedom House dated
14 2002, that's no longer his plan.

15 INMATE MONTEZ: I think he's referring to
16 the job letters, right?

17 DEPUTY COMMISSIONER SMITH: No, I'm
18 referring to Freedom House, your residential
19 plans.

20 INMATE MONTEZ: No, these are it right
21 here.

22 ATTORNEY RUTLEDGE: Yes, these no longer
23 apply, this one. It's an old letter they should
24 have never put in here.

25 INMATE MONTEZ: That bed might be gone by
26 now, you know.

27 DEPUTY COMMISSIONER SMITH: Well that's

1 my point, it's a letter that is four years old.
2 Not only may the bed be gone but that entire
3 operation may be gone.

4 **INMATE MONTEZ:** Yeah. I have a current
5 letter.

6 **DEPUTY COMMISSIONER SMITH:** Okay, great,
7 that's what I wanted to ask. Because there is
8 no reason for the Commissioner to read a letter
9 in that one, may have been addressed at your
10 last hearing, and two, is four years old. So I
11 appreciate you bringing the more current one.

12 **INMATE MONTEZ:** Thank you.

13 **PRESIDING COMMISSIONER GARNER:** All
14 right, this is a letter that is dated May 9,
15 2006 and it is from the Ventura County Rescue
16 Mission. And it's an outreach of the ministry
17 of Rescue Mission Alliance. And it is from a
18 Kyle, K-Y-L-E, Venning, V like Victor, E-N-N-I-
19 N-G, he is the interim chaplain counselor. The
20 staff at Ventura County Rescue Mission has
21 accepted your request for an interview to
22 determine if you qualify for your drug and
23 alcohol program. It speaks to upon a release
24 that you report directly to the Mission for
25 intake and all your court-appointed obligations
26 with the exception of parole meetings must be
27 taken care of before you commit to the nine-

1 month recovery program. You will need a
2 driver's license, ID card and social security
3 card. The indication is they don't provide
4 transportation. The letter is not a guarantee
5 of acceptance into the program. You've got to
6 go through the intake interview process before
7 being accepted. Then it speaks to being a
8 Christ-centered and Biblically based program and
9 provides a telephone number for you to call
10 prior to your arrival. And attached to it is a
11 description of the program, a brochure that was
12 provided. I'll get these back to you before the
13 end of the hearing. Okay, let me go ahead and
14 note that we sent out our legal notices, the
15 3042 notices that went to all the agencies that
16 had a direct involvement in your case. For the
17 record there is no written correspondence but we
18 do have a representative from the Los Angeles
19 County District Attorney's Office who will be
20 speaking later in the hearing. At this time let
21 me ask you to direct your attention over here to
22 Commissioner Smith who is going to talk to you
23 about your post-conviction factors.

24 **DEPUTY COMMISSIONER SMITH:** Mr. Montez,
25 you were received by the Department of
26 Corrections June 1, 1982. You were received
27 here at CTF January 21, 1998. You have a

1 classification score of 19. Your last hearing
2 was held on June 20, 2002. That was your sixth
3 subsequent hearing and you received a two year
4 denial at that time.

5 **INMATE MONTEZ:** Yes.

6 **DEPUTY COMMISSIONER SMITH:** The next
7 hearing was scheduled for August 31, 2004. That
8 was postponed as the psychological evaluation
9 that was available for that hearing was old and
10 a new evaluation was requested. And we have
11 that and I'll address that. It's unfortunate
12 that it took as long as it did for you to come
13 back before the Board again. But as
14 Commissioner Garner indicated, at that time the
15 Board was short of staff to conduct the hearings
16 and we're catching up with that. So we
17 apologize for the delay but obviously you are
18 here nevertheless. Since your last hearing you
19 have been, you have been extremely active, for
20 lack of a better word. You completed two EMI
21 certificates from the Federal Emergency
22 Management Agency October of '03 and November of
23 '03 for Emergency Preparedness, Radiological
24 Emergency Management. You received three
25 laudatory chronos, two in April of 2006 and one
26 in June of 2004 for a completion and
27 participation in the employability program. You

1 received six -- pardon me -- 16 laudatory
2 chronos all referencing your active AA and NA
3 participation but it appears to be primarily AA.

4 **INMATE MONTEZ:** Yes.

5 **DEPUTY COMMISSIONER SMITH:** And those
6 laudatory chronos go back from July of 2002
7 through April of this year. And because your
8 last hearing was June 2002 that's basically as
9 far back as I went. You also received a
10 laudatory chrono December of 2002 for completing
11 the 13-week IMPACT workshop. Your disciplinary
12 history has actually become quite positive. You
13 have received only four CDC 128(a)s, the last
14 one was in May 1989 and that was for a broken
15 window in a cell. And you received seven CDC
16 115s, the last one September of 1993 and that
17 was for non-performance. In looking over the
18 list there were a couple of initial 115s for
19 possession of a controlled substance. But since
20 that point, and that goes back to 1992 was the
21 last one and that was a positive test for
22 opiates. There has certainly been no indication
23 that you have been involved in any controlled
24 substance use since 1992 and there are no write-
25 ups for violence or weapons. You have been
26 assigned for some period of time to the PIA wood
27 product area as a furniture assembler. Is that

1 still accurate?

2 INMATE MONTEZ: Yes.

3 DEPUTY COMMISSIONER SMITH: And you
4 received exceptional and above-average work
5 reports in that area. Your participation in AA
6 has certainly been ongoing and been very
7 consistent. Is that a program that you find
8 important to you? And the reason that I ask
9 that question is that some individuals simply
10 attend that kind of a program because it looks
11 better than not, and others of course have a
12 real commitment to the program. And that's the
13 reason I asked the question. How do you feel
14 about the program?

15 INMATE MONTEZ: The program is, some
16 people would say it's a crutch, like religion.
17 But other people see it, the seriousness of it,
18 as a fellowship. If you feel that, if you feel
19 that you're going to relapse then you've got
20 somebody that you can lean on and help you
21 through it. That's what AA/NA is really about.
22 To guide you through your hard times.

23 DEPUTY COMMISSIONER SMITH: Is that a
24 program that you'll continue to participate in
25 in the community?

26 INMATE MONTEZ: Yes, that's why I, that's
27 why one of the reasons that I got that program

1 from that Rescue Mission because they offer
2 AA/NA and fellowship. But really AA/NA, the 12
3 principles, they're all Biblical but they have
4 taken the religion aspect out of it.

5 **DEPUTY COMMISSIONER SMITH:** Do you know
6 the steps?

7 **INMATE MONTEZ:** I know the steps as they
8 pertain to me to keep me from relapsing. The
9 way I apply them to myself and the things, I
10 have to do for people that I might have hurt,
11 you know. How to make amends, how to keep from
12 falling back.

13 **DEPUTY COMMISSIONER SMITH:** Before I
14 review the psychological evaluation are there
15 any other activities that you have been involved
16 in since your last hearing that I haven't
17 addressed that we should be aware of?

18 **INMATE MONTEZ:** No, basically you've
19 covered all bases.

20 **DEPUTY COMMISSIONER SMITH:** You certainly
21 have a very positive -- if something should come
22 to mind before we recess let me know because we
23 want to make sure that we've captured all the
24 positives.

25 **INMATE MONTEZ:** Yes sir.

26 **DEPUTY COMMISSIONER SMITH:** The
27 psychological evaluation was dated May 11, 2006

1 prepared by Dr. Macomber, M-A-C-O-M-B-E-R. And
2 I am going to identify or address just a couple
3 of sections that I think are most, most
4 important. And then if you or counsel have any
5 comments or would like to address any of the
6 other sections I'll certainly give you that
7 opportunity. Going to page two Dr. Macomber
8 writes that in the past based upon your criminal
9 history you had been diagnosed as having
10 antisocial personality disorder. But at this
11 point in your life there is no evidence of any
12 antisocial thinking or values. That your values
13 are solidly pro-social, you have deep feelings
14 of concern and empathy toward others. The
15 doctor concludes that therefore there is no
16 longer an appropriate diagnostic label of
17 antisocial behavior. Moving to page three under
18 assessment of dangerousness the doctor writes
19 that in considering the potential for dangerous
20 behavior in the institution you have remained
21 disciplinary-free for over 12 years. And that
22 due to your years of being disciplinary-free the
23 doctor concludes that you no longer possess a
24 risk to the institution. And compared to other
25 inmates your potential for dangerous behavior is
26 below average. In considering the potential for
27 dangerous behavior when released to the

1 community the doctor addresses a measure or an
2 exam that was given, identified as the Level of
3 Service Inventory Revised document. And that
4 document is an actuarial measure that assesses
5 criminal history, substance abuse history,
6 institutional adjustment, social relationships
7 and other factors that are used to determine
8 current risk level on parole. You obtained a
9 score of 5.1. And as the doctor notes in the
10 report, that means that if 100 men were released
11 on parole you would do better on parole than 95
12 of them. And the doctor notes, obviously, that
13 this is a low risk. The doctor goes on to
14 conclude that at this point in your life due to
15 your maturity, growth, increased insight, that
16 you possess no more risk to society than the
17 average citizen in the community. In fact,
18 based upon the positive changes in your life you
19 probably pose less risk to society than the
20 average citizen. That's a conclusion I won't
21 disagree with but that's certainly open for
22 discussion at some other time. Under clinical
23 observations and recommendations the doctor
24 writes that the prognosis for successful
25 adjustment in the community is excellent.
26 Mr. Montez, counsel, any comments or any other
27 sections you would like to have addressed for

1 the record?

2 ATTORNEY RUTLEDGE: Not at this time,
3 nothing.

4 INMATE MONTEZ: No sir.

5 DEPUTY COMMISSIONER SMITH: All right,
6 thank you, I'll return it to Commissioner
7 Garner.

8 PRESIDING COMMISSIONER GARNER:

9 Mr. Montez, let me ask you. It looks like the
10 last indication of drug use while incarcerated
11 was 1992 when you tested positive on a urine
12 analysis for opiates, is that correct?

13 INMATE MONTEZ: Yes sir, that is correct.

14 PRESIDING COMMISSIONER GARNER: Have you
15 been clean since that point?

16 INMATE MONTEZ: Yes sir. Well that's
17 when, that was a wake-up call. Because I said,
18 if I'm not going to change now, you know, I'm
19 not ever going to change.

20 PRESIDING COMMISSIONER GARNER: So '92
21 would have been your last --

22 INMATE MONTEZ: My last abuse, yes.

23 PRESIDING COMMISSIONER GARNER: Your last
24 abuse, okay. And you did have the little
25 episode at Folsom where you were actually
26 charged but they chose not to prosecute you and
27 you wound up with 115s.

1 INMATE MONTEZ: I think the one in Folsom
2 was '82, wasn't it?

3 PRESIDING COMMISSIONER GARNER: Yeah, I
4 think --

5 INMATE MONTEZ: The one in CRC was in
6 '92.

7 PRESIDING COMMISSIONER GARNER: That's
8 correct, yeah. Yeah, you had an October 22 of
9 '82 and that was the marijuana and then December
10 29 of '82. Both of those were Folsom. But the
11 last urinalysis was at CRC.

12 INMATE MONTEZ: Yes sir.

13 PRESIDING COMMISSIONER GARNER: Okay.
14 What caused the change from your plans in 2002
15 when you were going to live with your mother to
16 the present date?

17 INMATE MONTEZ: Well I had -- actually I
18 had two letters. I had the Freedom Home one and
19 I had my mother's. And they had given me a
20 choice, right, where I would, where I would like
21 to stay it. I said I would like to stay at my
22 mother's house but the Freedom Home offered the
23 program. That's why I had answered my mother's
24 house.

25 PRESIDING COMMISSIONER GARNER: Okay.
26 Are you, are you in contact with your family?

27 INMATE MONTEZ: Yes.

1 **PRESIDING COMMISSIONER GARNER:** Let me,
2 let me just quit beating around the bush.
3 Normally what we find in situations where we
4 have large families we find a lot of letters of
5 support that come in from the family, albeit
6 offering financial support, offering you a place
7 to live, offering you a car, or just offering
8 you spiritual and emotional support. I note
9 that there are some family members that have
10 problems but you still have a lot of other folks
11 left over. And I was just wondering why you
12 don't have any letters from your family?

13 **INMATE MONTEZ:** They're right here.

14 **ATTORNEY RUTLEDGE:** He means -- They
15 write you letters in the institution but have
16 they provided support letters for you?

17 **INMATE MONTEZ:** Yes.

18 **PRESIDING COMMISSIONER GARNER:** Have you
19 provided those to your counselor to get into
20 your file?

21 **INMATE MONTEZ:** The counselor that I was
22 going to give them to, he said just to bring
23 them over here.

24 **PRESIDING COMMISSIONER GARNER:** When did
25 he tell you that?

26 **INMATE MONTEZ:** A couple of weeks ago.

27 **PRESIDING COMMISSIONER GARNER:** All

1 right, well that's good advice a couple of weeks
2 ago because they wouldn't have made it in in
3 that time.

4 ATTORNEY RUTLEDGE: (Inaudible).

5 PRESIDING COMMISSIONER GARNER: Okay,
6 okay.

7 ATTORNEY RUTLEDGE: (Inaudible).

8 PRESIDING COMMISSIONER GARNER: Thanks.
9 Well it just surprised me because normally with
10 large, intact families like that we get a lot of
11 letters.

12 ATTORNEY RUTLEDGE: (Inaudible)?

13 INMATE MONTEZ: My mother and my ex-wife
14 and her kids.

15 PRESIDING COMMISSIONER GARNER: Okay.
16 Okay, thank you.

17 ATTORNEY RUTLEDGE: And this is since the
18 last hearing?

19 INMATE MONTEZ: And this is from my
20 daughter. Some of those are from my last
21 hearing and some of those I just received.

22 PRESIDING COMMISSIONER GARNER: Okay, I
23 am going to read recent ones so that we don't --
24 and particularly those that I'm able to find --

25 INMATE MONTEZ: Well the last hearing I
26 was supposed to have.

27 PRESIDING COMMISSIONER GARNER: The one

1 where it was postponed?

2 **ATTORNEY RUTLEDGE:** That was one --

3 **INMATE MONTEZ:** And current. There's
4 some current ones in there.

5 **PRESIDING COMMISSIONER GARNER:** Okay.

6 Well, let me get started. The first one is done
7 in a memo form, it's from Victoria Garcia. It
8 doesn't provide a date. Daughter of Victor.
9 Inform you that my father has my full support in
10 whatever he may need to get onto his feet and
11 become a productive member of society. That you
12 won't fall again. That you have been doing many
13 things to get yourself together and ask that we
14 give you a chance. For the record, the address
15 noted in this is in the city of Oxnard. I'll
16 try to make this next one out. This goes back
17 to '04 and it's from Renee Montez with an
18 address in Denver. It says, but you can tell
19 the Board you have a place to reside wherever I
20 am and Armando said you can stay with him. Let
21 me just do the one that's contained here. A
22 place to reside wherever I am at and that
23 whatever you need I'll do what I can. In fact,
24 the Coors Brewing Company has an ex-felon
25 program. They could put you to work in the
26 brewery warehouse welding or whatever. And if
27 you have access to the Internet check out the

1 job listing at Coors and other places. And this
2 was from Renee Montez who is a sister.

3 INMATE MONTEZ: Actually that was my
4 brother.

5 PRESIDING COMMISSIONER GARNER: Oh, Renee
6 is a brother?

7 INMATE MONTEZ: Yeah.

8 PRESIDING COMMISSIONER GARNER: Okay, I'm
9 sorry about that.

10 INMATE MONTEZ: He's my youngest one.

11 PRESIDING COMMISSIONER GARNER: That one
12 can go either way.

13 DEPUTY COMMISSIONER SMITH: There's an
14 undated letter from his mother, the one --

15 PRESIDING COMMISSIONER GARNER: Okay, we
16 have a handwritten letter from your mother.
17 She's Reynalda, R-E-Y-N-A-L-D-A, address noted
18 in Ventura. Victor does have a place to live
19 ion my home. Also if finances are needed he'll
20 have that as well. Take that into consideration
21 and what he has done to better himself since
22 incarcerated. She is now 78, she was 54 when
23 you went into prison. That she lost a son to a
24 violent act and still miss him. Mercy for those
25 last few years of my life by letting him come
26 home to me. SO that one is from your mother.
27 August 12, 2004, it's handwritten, and this one

1 is from -- is Garcia the last name? I can't
2 make it out.

3 **INMATE MONTEZ:** That's Victoria Garcia.

4 **PRESIDING COMMISSIONER GARNER:** Victoria
5 Garcia. And this would be?

6 **INMATE MONTEZ:** My daughter.

7 **PRESIDING COMMISSIONER GARNER:** Daughter,
8 okay. Daughter of Victor. Father has my
9 support and my husband's. Full support as
10 helping him financially. Also my husband
11 Richard is in the process of opening his own
12 small business which enables him to offer my
13 father employment. In the process of buying our
14 own home. We'll have a place for him to live.
15 Only a few months old when you were
16 incarcerated. Speaks to you not making the best
17 choices but that you have changed and that --
18 allow my father to come home to his family, his
19 mother, daughters and three beautiful
20 grandchildren ages one through five. We are
21 anxiously awaiting his arrival. And that one,
22 again, I think I said it was August 12, 2004.

23 **DEPUTY COMMISSIONER SMITH:** There are two
24 letters here from Martha Duran, the most recent
25 is dated May 4, '06. That will be the one that
26 Commissioner Garner will address. There are
27 actually two letters attached but the other one

1 is older so we'll address the most current.
2 Also just in case you're wondering, there was a
3 copy of the letter that your mother sent that I
4 just pulled, pulled out to the side. That
5 letter has already been addressed. And before
6 you read that I'm going to turn the tapes.

7 (The tape was turned over.)

8 **DEPUTY COMMISSIONER SMITH:** Thank you.

9 **PRESIDING COMMISSIONER GARNER:** Okay.

10 The date has already been noted on the letter
11 and it's from Martha Duran, who is your ex-wife.
12 I want to again reaffirm that I am still willing
13 and able to support in whatever area is needed.
14 We'll work together with the assigned parole
15 agent to make sure he keeps his appointments,
16 signs up for all services that are required so
17 he can be a productive member of society, assist
18 him in finding a job. And as far as having a
19 place to parole, he has a place to live with me.
20 I am employed, I have transportation it will not
21 be a problem. I stand with him and still
22 support him strongly. And this is from Martha
23 Duran who provided a cell phone telephone number
24 and there is an address, it looks like it's in
25 Oxnard. So Ms. Duran is in the Oxnard area?

26 **INMATE MONTEZ:** Yes.

27 **PRESIDING COMMISSIONER GARNER:** All

1 right, very good. With that, that pretty much
2 got all the letters of support from your family?

3 **INMATE MONTEZ:** Yes. I was going to
4 bring the real old ones to show a pattern but I
5 didn't think they were needed.

6 **PRESIDING COMMISSIONER GARNER:** No, this
7 is, this is fine. Okay, with that I'm going to
8 ask you to direct your attention -- excuse me,
9 we've already done that. I'm ahead of myself.
10 Okay, I will ask if Commissioner Smith has any
11 follow-up questions.

12 **DEPUTY COMMISSIONER SMITH:** No, I have no
13 questions.

14 **PRESIDING COMMISSIONER GARNER:** All
15 right. Mr. Lapin, any questions?

16 **DEPUTY DISTRICT ATTORNEY LAPIN:** I know
17 that the inmate refuses to discuss the offense.
18 I'm wondering if he will refuse to also discuss
19 where he may have gotten the gun regarding the
20 offense?

21 **INMATE MONTEZ:** I don't see no reason to.
22 I believe this was settled when the District
23 Attorney's Office offered me a plea bargain.
24 All this was supposed to be, have been taken
25 care of. I don't know why they keep bringing it
26 up.

27 **ATTORNEY RUTLEDGE:** That would mean he

1 doesn't --

2 DEPUTY DISTRICT ATTORNEY LAPIN: Then
3 that's a refusal. Also I would like to know if
4 he committed any other crime prior to the crime
5 that he is being incarcerated for on that
6 evening?

7 INMATE MONTEZ: I don't see how that has
8 any bearing on this hearing.

9 PRESIDING COMMISSIONER GARNER: Other
10 than those read into the record, sir?

11 DEPUTY DISTRICT ATTORNEY LAPIN: I have
12 no other questions.

13 PRESIDING COMMISSIONER GARNER: All
14 right. Ms. Rutledge, questions?

15 ATTORNEY RUTLEDGE: I wanted to ask my
16 client to authenticate these letters. What are
17 these letters?

18 INMATE MONTEZ: Those were, those were
19 more letters from different programs to give the
20 Board. If they weren't satisfied with the ones,
21 the choice that I made that they might be able
22 to pick from those.

23 ATTORNEY RUTLEDGE: I would note that
24 Mr. Montez has written to several other social
25 services like California Veterans Assistance,
26 Lutheran Social Services in Southern California
27 and New Directions of Los Angeles, if the Board

1 wishes to view those during deliberations. But
2 I just wanted to note that he has also pursued
3 other areas. And he also had -- I saw a flier
4 in your file about assistance offered through
5 the parole program. What was that about?

6 **INMATE MONTEZ:** That was from -- The PIA
7 has a -- I don't know if you gave it back to me.
8 The PIA that I work for has a representative in
9 the EDD that when we get out we go directly to
10 them and if we don't have a job they'll help us
11 get one and our driver's license.

12 **ATTORNEY RUTLEDGE:** All right. And then
13 the last question would be, you told the
14 Commissioner that you stopped the drugs about
15 '93. Have you had any other life changes? Do
16 you want to explain to us why you, what's
17 happened to you since you have been in prison as
18 far as life changes go.

19 **INMATE MONTEZ:** Well it's like I
20 explained earlier. In 1992, you know, I was
21 like, you know, I was doing the same things up
22 until 1992. When I got that last write-up for
23 the dirty UA I said, you know, there has to be a
24 change, you know. If I'm going to make it in
25 the streets if you guys ever let me out I have
26 to, I have to prove to myself that I can make
27 it. And being in prison with all this madness

1 going around and keeping myself clean without
2 getting any write-ups and trying to be a model
3 citizen as far as prison is concerned is trying
4 to show that I can be a model citizen out in the
5 street. But it has to start in here. I had to
6 start in here.

7 **ATTORNEY RUTLEDGE:** All right, no further
8 questions.

9 **PRESIDING COMMISSIONER GARNER:** All
10 right, Mr. Lapin, would you like to close.

11 **DEPUTY DISTRICT ATTORNEY LAPIN:** Yes I
12 would. And Commissioner Garner, I would like to
13 add to the facts as you disclosed them earlier.
14 Going from the probation officer's report
15 starting at page seven line three. Where I
16 believe Mrs. Irma Sabalos (phonetic), who was
17 the third person in the vehicle, informed
18 officers of the Los Angeles Police Department
19 West Valley Division on August 11, 1980 that:

20 "At approximately 10:30 p.m. on
21 August 9, 1980 she and two
22 associates, Victor Montez and
23 Denise Montez, had been visiting
24 San Bernardino and had stopped in
25 San Fernando Valley for a pizza on
26 the return trip. When the three
27 attempted to start the brown

1 station wagon afterwards it failed
2 to start and they decided to
3 hitchhike on the Ventura Freeway.
4 They first approached an unnamed
5 male approximately one-half hour
6 later. Subsequently it was agreed
7 that the witness and Mrs. Montez
8 would appear as two females
9 stranded on the freeway while
10 Mr. Montez would approach any
11 motorist who stopped and exhibit a
12 firearm he carried in his
13 waistband. The defendant hid in
14 the bush area while the women
15 hitchhiked. The victim approached
16 in a silver Datsun station wagon,
17 license number 828 YHP, conversed
18 with Mrs. Montez then allowed them
19 to enter his vehicle. The witness
20 entered the front seat and
21 Mrs. Montez entered the rear seat
22 while beckoning to the defendant
23 who was hiding in the bushes. The
24 defendant ran to the vehicle
25 brandishing a small caliber
26 firearm and entered the rear seat
27 of the vehicle. He then pointed

1 the weapon at the rear portion of
2 the victim's head and told him to
3 take them to Oxnard or he would
4 kill him. The defendant fired one
5 round without warning striking the
6 victim approximately in the lower
7 right of the head. The victim
8 fell forward. The defendant
9 exited the rear passenger door and
10 opened the front passenger door.
11 The defendant drug the victim's
12 body across the front seat from
13 the driver's side and secreted the
14 body beneath an overhanging tree
15 and shrub area. The witness then
16 observed the defendant going
17 through the victim's garment but
18 was unsure of what was removed.
19 The witness and Mrs. Montez had
20 also exited the vehicle. The
21 defendant then instructed the
22 witness to re-enter the vehicle
23 and told his wife to wear gloves
24 so as not to leave her
25 fingerprints on the vehicle. He
26 then entered the rear seat and
27 instructed his wife to drive the

1 vehicle to 456 Channel Islands
2 Boulevard in Oxnard. Upon arrival
3 at that residence, which was
4 occupied by Teresa Ramirez,
5 Mrs. Montez removed clothing which
6 had belonged to the victim and
7 attempted to wash them. The
8 witness was upset and the
9 defendant comforted her,
10 indicating they could not be
11 identified and there was no way to
12 trace their location. When the
13 witness suggested they turn
14 themselves in the defendant
15 threatened her with acts of
16 violence and stated she would be
17 killed if she contacted the
18 police."

19 I believe those factors need to be considered by
20 this Board, those factors in aggravation of this
21 offense. This is an extremely atrocious crime ~~—~~
22 committed by a admitted heroin addict. There
23 was absolutely no reason for this individual to
24 have been killed. The inmate, his wife and a
25 friend, the car broke down and they were trying
26 to get a ride to Oxnard and apparently the
27 victim agreed to take them. Why he had to kill

1 him is only known to him. His drug abuse can be
2 documented back to the age of 13 when he was
3 noticed by a law enforcement agency to have
4 marks on his arms. And that drug abuse
5 apparently continued at least through 1992 and
6 is only in remission at this point because he is
7 in prison. The fact that he has refused to
8 discuss the offense, I understand he has that
9 right to do so. He has also refused to discuss
10 any other factors regarding where he got the gun
11 or if there were any other crimes committed.
12 That only shows that this individual has not
13 really accepted responsibility for his crime, a
14 crime that can only be determined to be an
15 aggravated situation. There is nothing in
16 mitigation other than the psychiatric report and
17 his recent years of laudatory type chronos in
18 his file and a lack of discipline. But the
19 crime is so atrocious and so wanton and uncalled
20 for that I'm suggesting the Board deny him
21 parole for another five years. Thank you.

22 **PRESIDING COMMISSIONER GARNER:** Thank
23 you. Ms. Rutledge.

24 **DEPUTY COMMISSIONER SMITH:** Ms. Rutledge,
25 before we go into your closing, and Mr. Lapin,
26 I'll certainly give you an opportunity to
27 follow-up, I have one quick question I want to

1 interrupt. Mr. Montez, what period of time were
2 you and Martha Duran married?

3 INMATE MONTEZ: I think it was '93 to
4 '95.

5 DEPUTY COMMISSIONER SMITH: So you were
6 married while you were in prison?

7 INMATE MONTEZ: Yes sir.

8 DEPUTY COMMISSIONER SMITH: Okay. So you
9 have never resided together.

10 INMATE MONTEZ: No.

11 DEPUTY COMMISSIONER SMITH: Okay, thank
12 you. I appreciate that. Mr. Lapin, any follow-
13 up questions?

14 DEPUTY DISTRICT ATTORNEY LAPIN: No,
15 thank you.

16 DEPUTY COMMISSIONER SMITH: Okay.

17 ATTORNEY RUTLEDGE: All right, thank you.
18 I just wanted to note that the Commissioner read
19 the prisoner's version from the 2002 Board
20 report. And in that it indicates that
21 Mr. Montez gave a statement to his counselor,
22 the probation officer that he had the gun
23 pointed at the victim's head and he believed the
24 gun fired when the victim adjusted himself.
25 That it was not his intention to kill the
26 victim. I would also note that the narrative
27 read by the People taken from the probation

1 report was by the third accomplice who was
2 granted immunity. That statement would likely
3 have problems being admissible in a regular
4 court of law due to certain evidence rules. I *
5 know the evidence rules don't apply here but
6 however information still has to be reliable.
7 And I would ask the Board to give that statement
8 its due weight on what you think would be
9 reliable. Going to the factors in suitability
10 for Mr. Montez. This crime only involved one
11 victim. It wasn't dispassionate, calculated or
12 an execution-style murder based upon what he has
13 told, his comments he has made about the murder.
14 It appears that the -- also based on the facts
15 that the victim, they had a plan that he was
16 supposed to drive them somewhere. So it really
17 wouldn't make sense, I would speculate, for him
18 to shoot the guy if they were asking him for a
19 ride somewhere and he got back in the car with
20 them. There was -- It wasn't an especially
21 heinous crime or atrocious. The motive for the
22 crime, it appears that it was an accident.
23 Mr. Montez looks like he had a stable family
24 when he was growing up. He doesn't have any
25 history of psychological problems. His
26 institutional behavior since 1993 has been very
27 positive. He has a very positive psych report,

1 which I will go into in a moment, and he has not
2 had any write-ups in it looks like 13 -- his
3 last 115 I believe was in '93. None of those
4 write-ups have been violent. His prior prison
5 term was for car theft. It sounded like most of
6 his crimes were property, theft of property type
7 offenses. This would appear to be his first
8 conviction for violence. He did serve the
9 United States in the Army for two years and
10 while he's been here he has gotten several
11 vocations. He is also a certified legal
12 assistant and paralegal?

13 **INMATE MONTEZ:** Yes.

14 **ATTORNEY RUTLEDGE:** And he did
15 that, that's in his C File,
16 through a mail program. He has
17 been in AA and NA consistently for
18 the last, since his last hearing.
19 He's had two different anger
20 management courses, he's done peer
21 education. He has laudatory
22 chronos from IEP. He's done the
23 IMPACT program and I think that
24 just -- kind of parlay that.
25 Aside from his work with the PIA
26 and the IEP program I want to go
27 into his insight and remorse into

1 the crime. It looks like the
2 IMPACT program may have had some
3 impact on him. In the 2004, I
4 think it's the Board Report --
5 this is by your counselor, right?
6 Yeah. It states on the very last
7 page, but I can't see the page
8 number. Oh, it's page number
9 five. It says:
10 "While discussing the facts of the
11 crime Montez was candid when
12 expressing remorse for the victim
13 and makes no excuses for his
14 behavior. He realizes that his
15 actions is what led to the demise
16 of the victim. He indicates that
17 he must prove to himself and
18 society, thereby earning society's
19 trust in order to integrate back
20 into the free world in the future.
21 He expressed the need to continue
22 AA and NA counseling in order to
23 eliminate the unnecessary
24 stressors in his life. In terms
25 of employment the prisoner has
26 acquired skills in welding,
27 plumbing, furniture assembly --"

1 And in parentheses:

2 "-- standard line and semi-custom,
3 roofing, cement finisher and
4 upholstery repair. He has a GED
5 and has earned a certificate as a
6 legal assistant and paralegal."

7 So it appears that the rehabilitation programs
8 available to him have helped him gain insight
9 and helped him with his remorse. And that
10 counselor recommended that he remain
11 disciplinary-free, which he has done,
12 participate in NA programs, which he's continued
13 to do. I think it would appear that he is
14 definitely trying to deal with the contributing
15 factor to this crime, the drug addiction, the
16 long-term drug addiction issues. I would note
17 in the file too that he is -- in the recent
18 psych report by Dr. Macomber it indicates that
19 he became a Christian at some point and he is
20 aware -- I'm quoting from page two, I'm reading:

21 "He is aware of the importance of
22 remaining clean and sober. He is
23 very active in Bible studies. His
24 understanding and knowledge of the
25 Bible are significant and
26 considerable. He has incorporated
27 Biblical values into his life. As

1 a result he is determined to lead
2 a wholesome, helpful to others
3 productive life that pleases both
4 God and man. He asserts drugs is
5 no longer a problem in his life."

6 So all those things considered what I think we
7 have here is a rehabilitated inmate. Somebody
8 who is the poster boy for the reason why we have
9 sentences that start with a certain number of
10 years and go to life. We have a 53-year-old man
11 who has been in the system now for 24 years.
12 And those 24 years have been good to him as far
13 as helping him with his substance abuse issues
14 and to get some insight into the crime and
15 change the person that he is. He does not pose
16 an unreasonable risk of danger, he does meet the
17 suitability factors and I would ask that the
18 Board give him a parole date, thank you.

19 **PRESIDING COMMISSIONER GARNER:** Okay,
20 thank you. Mr. Montez, this is your opportunity
21 to address the panel on the subject of your
22 suitability for parole.

23 **INMATE MONTEZ:** Yes sir. Before when I
24 came up before the Board I was always asked, do
25 you think you're ready? Up until 1997 my answer
26 was always, and because I believed it, no, I'm
27 not ready. I admitted at that time that I

1 wasn't ready. Now I can tell you that this day,
2 that I am ready. Mind, spirit and soul I am
3 ready to go out there and be a productive member
4 to society. If I wasn't I'd tell you myself I
5 wasn't ready. I am more than ready. I wish I
6 could take back that day but I can't. His
7 people suffer, my people suffer, you know,
8 because we went through the same thing. I am
9 deeply sorry. I never tried to make contact
10 with the family because I think that would hurt
11 them more. But if I could apologize to them I
12 would. I wouldn't ask for forgiveness because,
13 you know, I think that would be an insult to
14 them. I just hope you take that into
15 consideration. Thank you.

16 **PRESIDING COMMISSIONER GARNER:** Thank
17 you. It is now 11:59 a.m. and we'll recess for
18 deliberations.

19 **R E C-E S S**

20 **--oOo--**

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1 CALIFORNIA BOARD OF PAROLE HEARINGS

2 D E C I S I O N

3 DEPUTY COMMISSIONER SMITH: We are back
4 on the record. Everyone previously identified
5 is back in the hearing room.

6 PRESIDING COMMISSIONER GARNER: Very
7 good, thank you. It's 12:20 p.m. in the matter
8 of Victor Montez, C Charles 48215. Mr. Montez,
9 the panel has reviewed all the information
10 received from the public and relied on the
11 following circumstances in concluding you are
12 not suitable for parole and would pose an
13 unreasonable risk of danger to society or a
14 threat to public safety if you were released
15 from prison. I want to tell you right out of
16 the chute we're going to deny you for a year and
17 we'll talk a little bit more about that as we
18 proceed through the hearing. We started with
19 the commitment offense. Although we considered
20 many factors we started with the commitment
21 offense and we felt that the offense was carried
22 out in an especially cruel manner. The victim,
23 Michael Stewart, 33 years of age, was shot in
24 the head after he stopped to render aid to what
25 he thought were two individuals that were in
26 distress along the side of the freeway. The
27 VICTOR MONTEZ C-48215 DECISION PAGE 1 05/31/06

1 offense was carried out in a very dispassionate
2 and calculated manner in that the first vehicle
3 to stop was going to be the target. It was
4 pretty clearly drawn that you put the two women
5 out on the freeway as a lure and that you were
6 hiding in the bushes and unfortunately it was
7 Mr. Stewart that was the first Samaritan that
8 decided to stop and help. The victim was *no facts*
9 defiled after the offense in that he was
10 stripped, his body was concealed along the
11 shoulder of the Ventura Freeway and just
12 basically left in the shrubbery. The motive for
13 the crime, when you consider the magnitude of
14 the offense, it was very trivial. You had the
15 car. The worst case scenario you could have
16 just ordered him out to the side of the freeway
17 but that's neither here nor there at this point
18 in time. The conclusions were drawn from the
19 statement of facts that were taken from the June
20 2002 calendar in that:

21 "On August 9, 1980 Montez and two
22 women, one of whom was his wife,
23 were on their way home, on their
24 way to Oxnard when their car
25 became disabled. The two women
26 began to hitchhike on the Ventura

1 Freeway while Montez hid in the
2 bushes. It was agreed that the
3 two women would appear as two
4 females stranded on the freeway
5 while Montez would approach the
6 motorist who stopped and exhibit a
7 firearm he carried in his
8 waistband. The victim, Michael
9 Stewart stopped for the women.
10 The women entered the car and Ms.
11 Montez entered the rear seat while
12 beckoning to Montez who was still
13 hiding in the bushes. He ran to
14 the car brandishing a small
15 caliber firearm and entered the
16 rear seat of the car. He pointed
17 the firearm at the back of the
18 victim's head and told him to
19 drive them to Oxnard or he would
20 kill him. Montez then fired,
21 striking and killing the victim.
22 Montez exited the car, dragged the
23 body from the car and secreted the
24 body beneath an overhanging tree
25 and shrubs. After leaving the
26 body Montez, his wife and the
27 VICTOR MONTEZ C-48215 DECISION PAGE 3 05/31/06

1 other female companion drove the
2 victim's car to Oxnard. Montez
3 was arrested on August 11, 1980."
4 So far as your previous record the panel noted
5 at the time that you did have an escalating
6 pattern of criminal conduct and that you had
7 failed previous grants of probation. And that
8 you had failed from society's previous attempts
9 to correct your criminality through the CYA
10 commitment. So far as the social history the
11 panel noted -- the criminality, excuse me. The
12 controlled substances and entering a non-
13 commercial dwelling which was an offense, a
14 602.5 offense, which was associated with a
15 burglary, which was dismissed in the interest of
16 justice. Excuse me. As far as your
17 institutional behavior you have programmed very
18 well. So far as the misconduct goes it is old
19 and dated. The last 128, you've had a total of
20 four, was May 26, 1989 and the last 115 was
21 September 16, 1995 for non-performance of work.
22 So far as the psychological report prepared by
23 Dr. Macomber in May 2006, it's favorable. So
24 far as your parole plans the one thing that we
25 wanted to note is we did take into consideration
26 the letter that you had from essentially the
27 VICTOR MONTEZ C-48215 DECISION PAGE 4 05/31/06

1 halfway house is for an interview only. And we
2 realize that very few of the halfway houses will
3 give you a firm commitment but one of that
4 things that really amplifies is the need to have
5 a firm backup parole plan that's very
6 comprehensive with a member of the family. Or
7 two; you can certainly have more than one. Also
8 if you are concerned about paroling back to the
9 county of the commitment offense, if the panel
10 thinks that you have a better shake and a better
11 chance going to another location to another
12 county we have the authority to parole you into
13 that county. So in this situation it looks like
14 the lion's share of your family is in the
15 Ventura County area. So if your letters come
16 forward from Ventura County with respect to
17 offers of housing, those would coincide with the
18 job offer that you have from Mr. Flores because
19 I believe that the job offer and his business is
20 in Ventura County. So get started as soon as
21 you can. I will share with you that the panel
22 does have some concerns about the offer of
23 housing from Martha Duran. We think you would
24 be better served with family members. That's
25 not to say it would be excluded. We're just
26 thinking that the family members are more of a
27 **VICTOR MONTEZ C-48215 DECISION PAGE 5 05/31/06**

1 positive and might serve your interest in a more
2 positive way. You were here, you heard the
3 response from the representative from the Los
4 Angeles County District Attorney's Office
5 indicating opposition to parole. So what we're
6 going to do at this point is we're going to
7 encourage you to continue your AA/NA, whichever
8 is available, and continue to earn the positive
9 chronos. And with that I'll ask Commissioner
10 Smith if he has got additional comments.

11 **DEPUTY COMMISSIONER SMITH:** Sir, quite
12 frankly with regard to the residential plan with
13 Ms. Duran. The parole division probably would
14 not approve that since you no longer have a
15 relationship. She's an ex-wife and that you
16 don't have a history of residing. It might be
17 fine with the next Board but from my experience
18 with the parole division they probably would not
19 approve that.

20 **INMATE MONTEZ:** I understand.

21 **DEPUTY COMMISSIONER SMITH:** You know, I
22 am certainly not being critical of your efforts,
23 your efforts are all positive. But I am just
24 suggesting that in this next year spend time to
25 really, really firm up the plans. You have got
26 a lot of options. You know, I'd focus on the

1 strongest ones.

2 INMATE MONTEZ: Okay.

3 DEPUTY COMMISSIONER SMITH: You are
4 certainly moving in the right direction. You
5 may be disappointed and if you are I certainly
6 understand that. But you are headed in the
7 right direction, in my opinion. I believe that
8 all things being equal with some improvements
9 that at your next hearing you will be a much
10 stronger candidate. A strong candidate today
11 but a much stronger candidate the next time. So
12 don't lose focus on what your objective is --

13 INMATE MONTEZ: No.

14 DEPUTY COMMISSIONER SMITH: -- which is
15 to get out of here. Okay?

16 INMATE MONTEZ: Yes.

17 DEPUTY COMMISSIONER SMITH: I wish you
18 well sir. Good luck to you.

19 INMATE MONTEZ: Thank you.

20 PRESIDING COMMISSIONER GARNER: I'll go
21 ahead and echo the comments. I am certainly
22 glad I asked about letters from your family now
23 because they really are -- they are more of an
24 asset than you will ever know. We have a lot of
25 inmates that come before us that basically have
26 no one on the outside, absolutely no one on the

27 VICTOR MONTEZ C-48215 DECISION PAGE 7 05/31/06

1 outside. They have either outlived them all or
2 the family has just basically written them off.
3 So you have got an asset there. It's going to
4 be your strength. It's going to be your social
5 and support network. Your employer is not going
6 to provide that, you're family is going to
7 provide your support network. The other thing,
8 that whatever family member you think offers you
9 the best plan for yourself, it would be helpful
10 also to have that family member identify AA/NA
11 resources that are immediately in the
12 neighborhood near them or the closest possible
13 to them. And whether they're along public
14 transportation routes or they are going to offer
15 to drive you there. Those are all things that
16 shore you up as a better candidate. I echo his
17 sentiment. I hope that you are not too
18 disappointed. Keep your focus because right now
19 the only thing that in my mind you have to work
20 on is shoring up the parole plans. I'll tell
21 you, don't slip on any banana peels calling a 15
22 or a 128 because that's not going to help you.
23 You've got some distance between those and you
24 don't have to worry about them right now. They
25 are not an issue at least with this panel and I
26 can't see them being an issue with the next

1 panel you come before. With that I'll go ahead
2 and note that it is now 12:28 p.m. and I am
3 going to wish you the best of luck. Get to
4 work.

5 INMATE MONTEZ: Okay. Well I just want
6 to say that I read First Peter's 2:14 and I
7 submitted to that so I am not disappointed.
8 (Indiscernible).

9 ATTORNEY RUTLEDGE: Thanks a lot.

10 DEPUTY COMMISSIONER SMITH: Thank you
11 both.

12 ATTORNEY RUTLEDGE: Good luck to you.

13 INMATE MONTEZ: Thank you.

14 --oOo--

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23 PAROLE DENIED ONE YEAR

SEP 28 2006

24 THIS DECISION WILL BE FINAL ON: _____

25 YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT
26 DATE, THE DECISION IS MODIFIED.

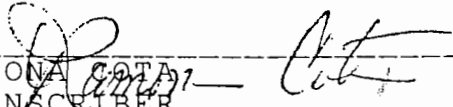
27 VICTOR MONTEZ C-48215 DECISION PAGE 9 05/31/06

CERTIFICATE AND
DECLARATION OF TRANSCRIBER

I, RAMONA COTA, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 - 61, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of VICTOR MONTEZ, CDC NO. C-48215, on MAY 31, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated August 13, 2006, at Sacramento County, California.



RAMONA COTA
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E X H I B I T 7

LIFE PRISONER EVALUATION REPORT
SUBSEQUENT PAROLE CONSIDERATION HEARING
JUNE 2004 CALENDAR

MONTEZ, VICTOR MANDEL

C48215

I. COMMITMENT FACTORS:

- A. Life Crime: All relevant documents from the previous hearing including the transcripts, have been considered and that information appears valid, and the writer has no further information to add.
1. Summary of Crime: Remains the same as stated in the previous hearings.
 2. Prisoner's Version: Remains the same as stated in the previous hearings.
 3. Aggravating/Mitigating Circumstances:
 - a. Aggravating Factors: Remains the same as stated in the previous hearings.
 - b. Mitigating Factors: Remains the same as stated in the previous hearings.
- B. Multiple Crime(s): None.
1. Summary of Crime: N/A.
 2. Prisoner's Version: N/A.

II. PRECONVICTION FACTORS:

- A. Juvenile Record: Documents from the previous hearings have been considered and that information remains valid.
- B. Adult Convictions: Documents from the previous hearing have been considered and that information remains valid.

COPY TO INMATE ON 7-22-09

- C. **Personal Factors:** Documents from the previous hearings have been considered and that information remains valid.

III. **POSTCONVICTION FACTORS:**

- A. **Special Programming/Accommodations:** None.

- B. **Custody History:** Documents from the previous hearings have been considered and the information remains valid. During the period of time since the last hearing, the prisoner has remained at the Correctional Training Facility and housed in the general population in a dorm setting. He has maintained a stable work record and presently assigned to the PIA Wood Furniture Assembly Factory. In review of the prisoner's work performance covering a period from 4/1/02 to 7/01/02, he demonstrated satisfactory work grades. However, noting a period from 7/1/02 to 11/01/02 per CDC 101 Work Supervisor's Reports dated 9/1/02, 10/1/02 and 11/1/02, the prisoner's work performance declined due to his attitude towards his supervisor and staff, his interest in his respective assigned work, teamwork building participation and quality of work. His supervisor comments were: Inmate Montez continued to actively pursue a transfer out of the Assembly Shop and has not worked since his last report dated 10/02. His quarterly report periods from 11/01/02 to 8/1/03 dated 2/1/03, 5/1/03 and 8/1/03, reflect improvement grades of satisfactory to above average work grades. In addition, during this review period, Montez enrolled in an Independent Study Program through Coastline Community College and was unable to complete the semester. However, he enrolled into the Federal Emergency Management Agency Institute, which is an independent study course. He earned two (2) Certificates of Achievement dated 11/13/03, in Radiological Emergency Management and Emergency Preparedness, USA dated 10/17/03. Finally, there are no documents in the Central File to reflect any vocational training upgrading experience during this review period.

- C. **Therapy and Self-Help Activities:** Participation in Narcotics Anonymous per CDC 128B dated 7/2/01, 7/10/01, 10/01/01, 10/2/01, 1/11/02, 1/17/02, 2/15/02, 3/29/02, 4/11/02, 07/01/02, 07/17/02, 10/01/02, 10/16/02, 12/21/02, 1/8/03, 4/23/03 and 5/6/03.

Participated in the donation drive for the American Red Cross in response to the terrorist attacks of September 11, 2001 in New York, Pennsylvania and Washington D.C. per CDC 128 dated 12/13/01.

Participated in and completed the Muslim Development Center's Anger Management Course per CDC 128B dated 2/20/02.

Successfully completed a thirteen-week Impact workshop - self-help group designed to provide education and awareness relative to the profound negative impact of crime and its affect on victims and the ripple effect on society per CDC 128-B dated 12/16/02.

- D. **Disciplinary History:** None during this review period. However, (7) CDC 115's and (4) 128-A's are noted.

CDC 128A's

11/06/84	CTF	Unauthorized Covering on Window.
08/19/85	CTF	Failure to Report to Work.
11/21/86	CTF	Unexcused Absence from School.
05/26/89	CMC-East	Broken Window in Cell.

CDC 115's

10/22/82	FOL	Possession of Marijuana. Disposition: Guilty. 10 days disciplinary detention suspended, plus 90 days screen visits.
12/29/82	FOL	Possession of Marijuana. Disposition: Guilty. 10 days disciplinary detention plus 90 days screen visits.
06/25/83	FOL	Out of Cell Without Authorization. Disposition: Guilty. Counseled and reprimanded.
03/03/86	CTF	Possession of Contraband Shirt. Charged \$8.50 plus 30 days loss of yard privileges.
01/09/89	CMC	Non-Performance (work). Disposition: Guilty, 15 days loss of credit.
02/12/92	CRC	Positive U/A for Opiates. Disposition: Guilty, 150 days loss of credit plus 120 days loss of contact visiting.
09/16/93	CRC	Non Performance (work). Disposition: Guilty, assessed 10 hours extra duty.

- E. **Other:** On 6/20/02, Montez was seen by the Board of Prison Terms for his Subsequent Parole Consideration Hearing #6. The Board's decision was to deny

parole for (2) years, and recommend that the prisoner remain disciplinary free and participate in narcotic anonymous self-help and therapy programs.

IV. FUTURE PLANS:

- A. **Residence:** The prisoner indicates that his parole plans have changed. His plans are to live at the Freedom House, located at 460 South "F" Street, Oxnard, CA 93030. Telephone: 805-483-8343. Contact person: Jeff Simpson, Administrator. This facility is a 90- day clean and sober living environment for men. A letter of conditional acceptance was noted in the Central File dated 5/30/03. If released from prison, Montez states that he wants to make it on his own merit out in the free world, without the assistance or help of his family. However, he states that updated letters of support from his family and friends are forthcoming.
- B. **Employment:** Remains the same as indicated in the previous Board Report dated 6/2002. In addition, the prisoner completed 915 hours and received a Certificate of Legal Assistant/ Paralegal from the Blackstone School of Law Paralegal Studies, Inc. dated 11/9/01, at Dallas, Texas. During this interview, the prisoner did not offer a job reference, however, he feels confident that he will secure employment once he is released. His secondary plans are to work in the oil fields around in the state.
- C. **Assessment:** At the present time, the prisoner's parole plans appears stable at this time. Montez indicates that his plans are to reside in a residential home with a 12 step program that offers a sober and clean living environment for drug and alcohol offenders. He also indicates, once he completes this program, he will be able to secure employment and become independent to reintegrate back into society. He has acquired skills in welding, plumbing, furniture assembly (standard line and semi-custom), roofing, cement finisher and upholstery repair. He received a Certificate from the Blackstone Paralegal Studies, Inc., as a legal assistant/paralegal by completing 915 hours of correspondence studies. However, Montez did not offer a job reference at this time, he feels confident that he will secure employment once he is released.

V. USINS STATUS: N/A.

VI. SUMMARY:

- A. Considering the commitment offense, prior record and prison adjustment, this writer believes the prisoner would probably pose a low degree of threat to the public at this time, if released from prison. This impression is based on the

prisoner's disciplinary history for eleven years, his stable work record, participation in self-help programs and his efforts of educational upgrading experience during this review period. While discussing the facts of the crime, Montez was candid when expressing remorse for the victim, and makes no excuses for his behavior. He realizes that his action's is what lead to the demise of the victim. He indicates that he must prove to himself and society thereby earning society's trust, in order to integrate back into free world in the future. He expressed the need to continue A.A. and N.A. counseling in order to eliminate the unnecessary stressors in his life. In terms of employment, the prisoner has acquired skills in welding, plumbing, furniture assembly (standard line and semi-custom), roofing, cement finisher and upholstery repair. He has a GED, and has earned a certificate as a legal assistant and paralegal. Montez indicates, once he is released, he is confident that he will secure employment and use the tools that he has gained and experienced to become a positive member of society.

- B.** Prior to release the prisoner could benefit from:
- 1) Remaining disciplinary free,
 - 2) Participate in Narcotics Anonymous Self-Help Programs and therapy programs.
- C.** This report is based upon an interview with the prisoner on 3/25/04 lasting approximately 1.5 hours and a complete review of the Central File lasting 3 hours.
- D.** Montez was afforded an opportunity to examine his Central File on 3/25/04 per the Olson decision per CDC 128B.
- E.** No accommodation was required per the Armstrong vs. Davis BPT Parole Proceedings Remedial Plan (ARP) for effective communication.

BOARD OF PRISON TERMS

STATE

OF CALIFORNIA

LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING
- ☐ PROGRESS HEARING

INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, ie., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
07/01 to 6/02			<p>PLACEMENT: Remained at the Correctional Training Facility - II and housed in the general population.</p> <p>CUSTODY: Medium A.</p> <p>VOC. TRAINING: None during this review period.</p> <p>ACADEMICS: None noted this review period.</p> <p>WORK RECORD: Assigned to the PIA Wood Furniture Factory Assembly Shop. There are no work supervisor reports in the Central File noting work performance during this period.</p> <p>GROUP ACTIVITIES: Participated in N/A per CDC 128B's dated 7/10/01, 10/01/01, 10/02/01, 1/11/02, 1/17/02, 2/15/02, 3/29/02 and 4/11/02. Participated in and completed the Muslim Development Center's Anger Management Course per CDC 128B dated 2/20/02.</p> <p>PSYCH. TREATMENT: None during this review period.</p> <p>PRISON BEHAVIOR: None during this review period.</p> <p>OTHER: N/A.</p>
			DATE
MONTEZ, VICTOR		C48215	CTF-SOLEDAD JUN/2004

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

CONTINUATION SHEET: LIFE PRISONER : POSTCONVICTION PROGRESS REPORT

STCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
06/02 to 06/03			<p>PLACEMENT: Remained at the Correctional Training Facility- II and housed in the general population.</p> <p>CUSTODY: Medium A</p> <p>VOC. TRAINING: None during this review period.</p> <p>ACADEMICS: None during this rating period.</p> <p>WORK RECORD: Assigned to the PIA Wood Furniture Assembly Shop. He earned above average work grades and received exceptional grades for the use of tools and equipment per CDC 101 dated 7/1/02. However, a CDC 101 dated 9/1/02, reflects the prisoner's performance declined due to his attitude toward his supervisor and staff, his interest in his respective assigned work, teamwork building and participation and quality of work. His supervisor comments: Montez continues to "opt out" of work, whenever he is given the chance, as noted a CDC 101 dated 11/01/02. He continues to actively pursue a transfer and has not worked since his last report per CDC 101 dated 11/1/02.</p> <p>GROUP ACTIVITIES: Participated in NA per CDC 128B's dated 7/17/02, 7/1/02, 10/1/02, 10/16/02, 12/1/02, 1/8/03, 4/23/03, and 5/6/03. He completed a thirteen week Impact workshop self help group designed to provide education and awareness relative to the profound negative impact of crime and its affect on victims and the ripple effect on society per CDC 128B dated 12/16/02.</p> <p>PSYCH. TREATMENT: None during this review period.</p> <p>PRISON BEHAVIOR: None during this review period.</p> <p>OTHER: On 6/20/02, Montez was seen by the Board of Prison Terms for his Subsequent Parole Consideration Hearing #6. The Board's decision was to deny parole for (2), and recommend that the prisoner remain disciplinary free and participate in Narcotic Anonymous self-help and therapy programs.</p>

ORDER:

- | | | |
|---|---------|--|
| <input type="checkbox"/> BPT date advanced by | months. | <input type="checkbox"/> BPT date affirmed without change. |
| <input type="checkbox"/> PBR date advanced by | months. | <input type="checkbox"/> PBR date affirmed without change. |

SPECIAL CONDITIONS OF PAROLE:

- ☐ Previously imposed conditions affirmed.
- ☐ Add or modify
- ☐ Schedule for Progress Hearing on appropriate institutional calendar

MONTEZ, VICTOR

C48215

CTF-SOLEDAD

JUN/2004

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

CONTINUATION SHEET: LIFE PRISONER : POSTCONVICTION PROGRESS REPORT

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
6/03 to 3/31/04 (Present)			<p>PLACEMENT: Remained at the Correctional Training Facility- II and housed in the General Population.</p> <p>CUSTODY: Medium A</p> <p>VOC. TRAINING: None noted during this review period.</p> <p>ACADEMICS: Enrolled into the Federal Emergency Management Agency Institute and completed (2) independent study courses and received Certificate(s) of Achievement in - Emergency Preparedness, USA dated 10/17/03 and Radiological Emergency Management dated 11/13/03.</p> <p>WORK RECORD: The prisoner remained assigned to the PIA Wood Furniture Assembly Factory. His attitude changed and his work performance reflected satisfactory work grades per CDC 101 dated 5/01/03, and 8/1/03.</p> <p>GROUP ACTIVITIES: None noted during this review period.</p> <p>PSYCH. TREATMENT: None noted during this review.</p> <p>PRISON BEHAVIOR: None noted during this review.</p> <p>OTHER: N/A.</p>

ORDER:

- | | | |
|---|---------|--|
| <input type="checkbox"/> BPT date advanced by | months. | <input type="checkbox"/> BPT date affirmed without change. |
| <input type="checkbox"/> PBR date advanced by | months. | <input type="checkbox"/> PBR date affirmed without change. |

SPECIAL CONDITIONS OF PAROLE:

- ☐ Previously imposed conditions affirmed.
- ☐ Add or modify
- ☐ Schedule for Progress Hearing on appropriate institutional calendar

MONTEZ, VICTOR


C48215

CTF-SOLEDAD

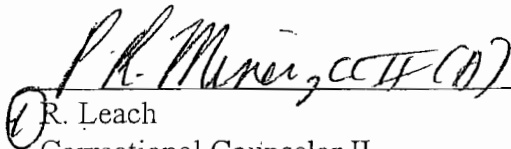
JUN/2004

BOARD OF PRISON TERMS


STATE OF CALIFORNIA



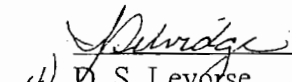
H. Staten Date
Correctional Counselor I



R. Leach Date
Correctional Counselor II



R. Pope Date
Facility Captain



4) D. S. Levorse Date
Classification and Parole Representative

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

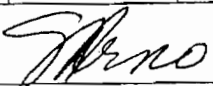
- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING
- ☐ PROGRESS HEARING

ADDENDUM

INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, ie., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
4/04 to 4/05			<p>PLACEMENT: CTF.</p> <p>CUSTODY: Medium A.</p> <p>VOC. TRAINING: None noted during this period.</p> <p>ACADEMICS: None noted during this period.</p> <p>WORK RECORD: Inmate Montez continued as a Furniture Assembler and received exceptional and above average ratings in various categories on his work supervisor's reports.</p> <p>GROUP ACTIVITIES: He continued his participation in A.A/N.A Program. On 6/10/04 Montez received a CDC 128B laudatory chrono. for his participation in the Inmate Employability Program.</p> <p>PSYCH. TREATMENT: None during this review period.</p> <p>PRISON BEHAVIOR: Inmate Montez remained disciplinary free during this period.</p> <p>OTHER: None.</p>
CORRECTIONAL COUNSELOR'S SIGNATURE			DATE
			5/12/05
MONTEZ, VICTOR	C48215	CTF-SOLEDAD	

COPY TO INMATE ON
May 18, 2005

LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

ADDENDUM

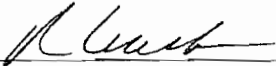


S. Arno

Correctional Counselor I

5/12/05

Date



R. Leach

Correctional Counselor II

5/12/05

Date

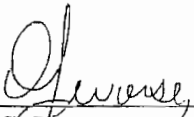


R. Pope

Facility Captain

5-13-05

Date



D.S. Levorse

Classification and Parole Representative

CAPR 5-17-05

Date

MONTEZ

C48215

CTF-SOLEDAD

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

LIFE PRISONER: POSTCONVICTION PROGRESS REPORT


- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING
- ☐ PROGRESS HEARING

ADDENDUM

INSTRUCTIONS


TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

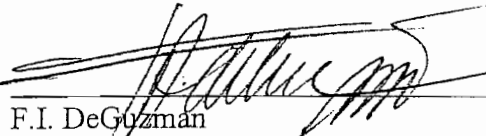
TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, ie., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
4/05 to 4/06 (Present)			<p>PLACEMENT: CTF.</p> <p>CUSTODY: Medium A.</p> <p>VOC. TRAINING: None noted during this period.</p> <p>ACADEMICS: None noted during this period.</p> <p>WORK RECORD: He continued his assignment as a Furniture Assembler in the P.I.A. Wood Products section and received exceptional and above average ratings in various categories on his Work Supervisor's Reports.</p> <p>GROUP ACTIVITIES: Inmate Montez continued his fine participation in the AA Program per several CDC 128B laudatory chronos.</p> <p>PSYCH. TREATMENT: None noted during this period.</p> <p>PRISON BEHAVIOR: He remained disciplinary free during this period.</p> <p>OTHER: None.</p>
CORRECTIONAL COUNSELOR'S SIGNATURE 			DATE 4/25/06
MONTEZ, VICTOR C48215			CTF-SOLEDAD

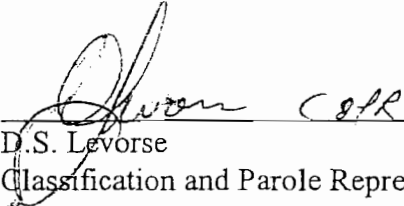
LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

ADDENDUM

 4/25/06
S. Arno Date
Correctional Counselor I

 5-2-06
F.I. DeGuzman Date
Correctional Counselor II (A)

 5-3-08
R. Pope Date
Facility Captain

 5-5-08
D.S. Levorse Date
Classification and Parole Representative

MONTEZ, VICTOR

C48215

CTF-SOLEDAD

EXHIBIT 8

5/8

**MENTAL HEALTH EVALUATION FOR
THE BOARD OF PRISON HEARINGS
May, 2006 Lifer Calendar**

**CORRECTIONAL TRAINING FACILITY SOLEDAD
MAY, 2006**

NAME: MONTEZ, VICTOR
CDC#: C-48215
DOB: 7/6/53
OFFENSE: PC 187 MURDER, SECOND DEGREE
DATE OF OFFENSE: 8/9/80
SENTENCE: 17 YEARS TO LIFE
MEPD: 4/9/90
EVALUATION DATE: 5/11/06

I. IDENTIFYING INFORMATION:

Mr. Victor Montez is a 52 year old, first term, divorced, Hispanic male. He is a Christian. He has served 25 years on his sentence.

SOURCES OF INFORMATION:

This evaluation is based upon a single 90 minute interview, plus review of the central and medical files.

The psychological evaluation, written on 6/20/00, at CTF-Soledad for the BPT by Dr. Terrini, Psychologist, contains a Psychosocial Assessment. This information was reviewed with the inmate and is still current and valid. As a result, this information will not be repeated at this time.

MONTEZ, VICTOR
C-48215
5/11/06
PAGE 2

CLINICAL ASSESSMENT

XII. CURRENT MENTAL STATUS/TREATMENT NEEDS

Mr. Montez related during the interview in a serious, outgoing, friendly and cooperative manner. His mental status was within normal limits. He was alert and well oriented. His thinking was rational, logical and coherent. His speech was normal, fluent and goal oriented. His affect was appropriate. There was no evidence of anxiety or of depression. His eye contact was good. Intellectually, he was functioning in the average ranges. His memory was intact. His judgment was intact. His insight and self-awareness were very good.

Mr. Montez has a criminal background associated with his heroin addiction. He continues to attend Alcoholics Anonymous. He has not used drugs since 1992, when he last received a positive urinalysis test. He has been clean and sober now for 14 years. Mr. Montez is very aware of the destructive effects of drugs or of alcohol in a person's life. He is aware of the importance of remaining clean and sober. He is very active in Bible studies. His understanding and knowledge of the Bible are significant and considerable. He has incorporated Biblical values into his life. As a result, he is determined to lead a wholesome, helpful to others, productive life, that pleases both God and man. Use of drugs is no longer a problem in his life. It certainly is not a current diagnostic problem.

He has acquired significant vocational skills. He has experience as a welder, working with the arc and gas. He also is certified in Vocational Office Machine Repair. He has worked as a plumber. He is working now in PIA Furniture Manufacturing. He also has worked as a heavy equipment operator in the past. He also attended Blackstone School of Law and is certified as a paralegal. In addition to this achievement, he has completed the Inmate Employability Program, Finding Employment, sponsored by Prison Industries Authority. He continues to attend Alcoholics Anonymous. He has his GED. He also has completed Anger Management.

In the past, based upon his criminal history, Mr. Montez has been diagnosed as having an Anti-Social Personality Disorder. At this point in his life there is no evidence of any antisocial thinking or values. His values are solidly pro-social. He has deep feelings of concern and empathy towards others. Therefore, this is no longer an appropriate diagnostic label.

MONTEZ, VICTOR
C-48215
5/11/06
PAGE 3

CURRENT DIAGNOSTIC IMPRESSION

Axis I: No mental disorder
Axis II: No personality disorder
Axis III: No physical disorder
Axis IV: Life term incarceration
Axis V: Current GAF: 90

XIII. REVIEW OF LIFE CRIME

Mr. Montez accepts full responsibility for the commitment offense. He put a gun to the victim's head in an effort to rob him. The victim's elbow hit the gun, and it went off accidentally. He stated that he did not intend to hurt the victim. He does take full responsibility for the victim's death. He stated that due to his actions, and the victim's loss of his life, the victim's family has suffered. He commented how he understands how the victim's family has never been able to recover from their suffering due to the victim's loss of life. He knows this, because he has developed insight into what the family feels when they lose a loved one. He lost a brother in a similar situation. The family is still suffering from this loss. His feelings of remorse appear to be sincere and genuine.

He stated that he had become a Christian through the ministry of Victory Outreach prior to this offense. He stated that he had begun to backslide. He stated that because he was disobedient to God and God's expectations for his life, he was a disobedient child and God placed him in a situation, where he would have ample opportunity to study the Bible, explore his own life, seek forgiveness for his sins, and grow spiritually. He stated that he believes that when this process in which he must continue to grow and advance spiritually is finished, God will allow him to be released from prison.

XIV. ASSESSMENT OF DANGEROUSNESS

- A. In considering potential for dangerous behavior in the institution, he has remained disciplinary free for over 12 years. Prior to that time, he did receive disciplinaries for possession of marijuana and use of heroin. At that point in time, his potential for dangerous behavior was higher. However, due to his years of being disciplinary free, he no longer poses a risk to the institution; and compared to other inmates, his potential for dangerous behavior is below average.
- B. In considering potential for dangerous behavior when released to the community, the Level of Service Inventory-Revised was administered.

MONTEZ, VICTOR
C-48215
5/11/06
PAGE 4

This is an actuarial measure that assesses criminal history, substance abuse history, institutional adjustment, social relationships and other factors to determine current risk level on parole. He obtained a score of 5.1 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 95 of them. This is a low risk score. At this point in his life, due to his maturity, growth, and increased insight, he poses no more risk to society than the average citizen in the community. In fact, based upon the positive changes in his life, he probably poses less risk to society than the average citizen.

C. There are no significant risk factors in this case.

XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS

There are no mental or emotional problems in this case that would interfere with routine parole planning. This man has a supportive family in the community. He plans on living with his mother in Oxnard. He also has developed job offers in the community. He also has letters in the file, indicating that he has been accepted for placement in a residential substance abuse program. He has numerous vocational skills that will enable him to maintain work in the community. All of these positive factors are strong indicators that he will do well on parole. The prognosis for successful adjustment in the community is excellent.

M. Macomber PhD

M. Macomber, Ph.D.
Correctional Psychologist
Correctional Training Facility, Soledad

B. Zika, Ph.D.

B. Zika, Ph.D.
Senior Psychologist
Correctional Training Facility, Soledad

D: 5/11/06
T: 5/12/06

E X H I B I T 9

Memorandum

October 23, 1997

cc: CDW'S
AW'S
C&PR CCRM
HCM
LIT COOR

To: Wardens
Classification and Parole Representatives
Classification Staff Representatives
Correctional Counselor IIIs

Subject: **CLARIFICATION OF CALIFORNIA CODE OF REGULATIONS SECTION 3375.2
HOUSING FOR LEVEL I AND LEVEL II LIFE-TERM INMATES**

This memorandum clarifies questions regarding the California Department of Corrections' policy for housing life-term inmates. The California Code of Regulations Section 3375.2 (a)(7)(A) explains an inmate serving any life term shall not be housed in a Level I or II facility if "...the commitment offense involved multiple murders, unusual violence, execution-type murders or received high notoriety."

Staff repeatedly question the meaning and intent of these exclusionary factors. Staff shall use the following definitions in applying this policy:

- "Multiple murders" means the inmate killed more than one victim during the commission of the crime for which the inmate is currently serving the life term. This does not include inmates who have killed more than one person during their criminal career. Serial killers shall be excluded from Level I or II placement even if the murders were prosecuted separately.
- "Unusual violence" means offenses wherein the inmate tortured the victim over a period of time or intentionally made the victim endure great pain and suffering. While stabbing, shooting, or beating the victim may be very violent, it is not necessarily "unusual violence."
- "Execution-type murders" include those crimes wherein the victim was shot in the head after being bound or cuffed, made to kneel, made to lie down, or made to face a wall. This does not include all crimes wherein the victim was killed to prevent testimony, killed in a "drive-by" shooting, or killed as an informant by orders of prison or street-gang leadership.
- "High notoriety" is meant to describe those cases that received, at least, statewide media coverage. Extensive coverage by local newspapers or television stations is not sufficient for exclusion.

AW-CL

E X H I B I T 10

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**DEPT 100**

Date: AUGUST 15, 2007

Honorable: STEVEN R. VAN SICKLEN
NONEJudge JOSEPH M. PULIDO
Bailiff NONEDeputy Clerk
Reporter

(Parties and Counsel checked if present)

BH004498

In re,
VICTOR M. MONTEZ,
Petitioner,
On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

Nature of Proceedings: ORDER RE: WRIT OF HABEAS CORPUS

The Court has read and considered petitioner's Writ of Habeas Corpus filed on January 2, 2007. Having independently reviewed the record, giving deference to the broad discretion of the Board of Parole Hearings ("Board") in parole matters, the Court concludes that the record contains "some evidence" to support the Board's finding that petitioner is unsuitable for parole (See Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 667 (hereafter *Rosenkrantz*)).

Petitioner was received in the Department of Corrections on June 1, 1982 after a conviction for second-degree murder with use of a firearm. He was sentenced to seventeen years to life. His minimum parole eligibility date was April 9, 1990. The record reflects that on August 9, 1980, petitioner, his wife, and a female companion were traveling to Oxnard when their car broke down on the Ventura Freeway. The two women stood on the side of the freeway waiting for someone to stop to offer help, while petitioner hid in the bushes. The victim stopped for the two stranded women. As they entered the vehicle, petitioner ran up brandishing a gun. He ordered the driver to take them to Oxnard. He then fired the weapon killing the victim. He dragged the body out of the car and hid it under a tree and shrubs. Then, petitioner and his crime partners drove off in the victim's car. Petitioner contends that he fired the gun accidentally when the victim attempted to adjust the seat.

The Board found petitioner unsuitable for parole after a parole consideration hearing held on May 31, 2006. Petitioner was denied parole for one year. The Board concluded that petitioner was unsuitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety. The Board based its decision on several factors, including his commitment offense.

The Court finds that there is some evidence to support the Board's finding that "the motive for the crime is inexplicable or very trivial in relation to the offense" (Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(E).) "To fit the regulatory description, the motive must be materially less significant (or more "trivial") than those which conventionally drive people to commit the offense in question, and therefore more indicative of a risk of danger to society if the prisoner is released than is ordinarily present." (*In re Scott* (2004) 119 Cal. App.4th 871, at 893.) In this case, petitioner and his crime partners killed the victim because they needed a ride to Oxnard. The Board was justified in concluding that this motive is materially less significant motives than those motives which

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**DEPT 100**

Date: AUGUST 15, 2007

Honorable: STEVEN R. VAN SICKLEN
NONEJudge JOSEPH M. PULIDO
Bailiff NONEDeputy Clerk
Reporter

(Parties and Counsel checked if present)

BH004498

In re,
VICTOR M. MONTEZ,
Petitioner,
On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

conventionally drive people to commit murder, thus indicating that petitioner poses a greater risk of danger to society if released than is ordinarily present.

Additionally, the record reflects that petitioner had an unstable social history prior to the commitment offense, which is a factor tending to indicate unsuitability for parole. (Cal. Code Regs., tit. 15, §2402, subd. (c)(3).) Petitioner began using heroin when he was thirteen years old. He eventually developed a \$200 a day habit. He was first arrested at the age of thirteen and had several more arrests as an adult, leading to sentences of probation and state prison in New Mexico. He dropped out of high school when he was sixteen years old. Heavy drug use, school problems, and prior criminality are some evidence of an unstable social history. (*In re Van Houten* (2004) 116 Cal. App.4th 339, 353.)

The Court rejects petitioner's argument that he is entitled to release based on the terms of his plea agreement. A plea bargain violation claim depends upon the actual terms of the agreement, not the subjective understanding of the defendant or deficient advice provided by his attorney. (*In re Honesto* (2005) 130 Cal. App.4th 81, 91-93.) According to the terms of his plea bargain, petitioner pled guilty to second degree murder with use of a firearm and agreed to a sentence that carried a maximum term of life in prison. Petitioner has "no vested right to determination of his sentence at less than the maximum." (*In re Schoengarth* (1967) 66 Cal.2d 295, 302.) Therefore, the Board did not violate the plea bargain in finding petitioner unsuitable for parole.

Accordingly, the petition is denied.

The court order is signed and filed this date. The clerk is directed to give notice.

A true copy of this minute order is sent via U.S. Mail to the following parties:

Victor M. Montez
C-48215
Correctional Training Facility
P.O. Box 689
Soledad, California 93960

Department of Justice- State of California
Office of the Attorney General
Gregory J. Marcot, Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012	CONFORMED COPY AUG 15 2007
PLAINTIFF/PETITIONER: VICTOR M. MONTEZ	LOS ANGELES SUPERIOR COURT Joseph M. Pulido
CLERK'S CERTIFICATE OF MAILING CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)	CASE NUMBER: BH004498

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- | | |
|--|--|
| <input type="checkbox"/> Order Extending Time | <input checked="" type="checkbox"/> Order re: Writ of Habeas Corpus |
| <input type="checkbox"/> Order to Show Cause | <input type="checkbox"/> Order |
| <input type="checkbox"/> Order for Informal Response | <input type="checkbox"/> Order re: |
| <input type="checkbox"/> Order for Supplemental Pleading | <input type="checkbox"/> Copy of Petition for Writ of Habeas Corpus for the Attorney General |

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

August 15, 2007
DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk

By: Joseph M. Pulido, Clerk
Joseph M. Pulido

Victor M. Montez
C-48215
Correctional Training Facility
P.O. Box 689
Soledad, California 93960

Department of Justice- State of California
Office of the Attorney General
Gregory J. Marcot, Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101

E X H I B I T 11

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

In re

VICTOR M. MONTEZ,

on

Habeas Corpus.

B202287

(L.A.S.C. Nos. A146105, BH004498)

ORDER

COURT OF APPEAL - SECOND DIST.

FILED

NOV - 2 2007

JOSEPH A. LANE

Clerk

P. GONZALEZ

Deputy Clerk

THE COURT*:

The petition for writ of habeas corpus, filed September 21, 2007, has been read and considered.

The petition is denied.

*MALLANO, Acting P. J.

VOGEL, J.

JACKSON, J.**

** Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

January 29, 2008

Victor M. Montez, C-48215
CTF-East Dorm (ED-181L)
P.O. Box 689
Soledad, CA 93960

Petitioner in pro se


Clerk of the Court
United States District Court
Northern District of California
450 Golden Gate Ave.
San Francisco, CA 94102

RE: FILING WRIT OF HABEAS CORPUS

Clerk of the Court:

Please find enclosed the original of my habeas corpus petition. Please bill me for the filing fee. I apologize for the inconvenience my request may cause, but if I send my writ through the prison Trust Office it will be delayed, maybe even lost. When I receive the notice of payment due I will make arrangements for the filing fee to be paid by a family member. Again, I apologize.

Respectfully,


Victor M. Montez
Petitioner in pro se

E-filing

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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VICTOR MONTEZ, C-482M
STF-EAST DORM (ED-181C)
P.O. Box 689
SOLEDAD, CA 93960

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